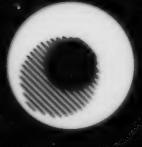
Edited by DAVID CONKLIN
and PAUL BERGMAN

Pay Equity

IN ONTARIO:

a manager's guide



The Institute
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Research and
Development

Pay Equity in Ontario: A Manager's Guide

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Pay Equity in Ontario: A Manager's Guide

edited by

David W. Conklin

and

Paul Bergman

The Institute for Research on Public Policy
L'Institut de recherches politiques

and

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Foreword

Ontario's pay equity legislation, Bill 154, took effect January 1, 1988. The law is designed to eliminate gender discrimination from the wage-setting process. Under this law, jobs must be classified and ranked on the basis of *skill*, *effort*, *responsibility*, and *working conditions*. If a female-dominated job class and male-dominated job class are found to be the same *in value* but the female-dominated class is paid less, then a pay equity plan must be developed that will eliminate this difference.

According to the Ontario Women's Directorate, in 1985 women working full-time in Ontario earned only 63 cents for every $1 earned by men. The pay equity law is designed to eliminate, over time, at least a portion of this economic form of discrimination. The law has various dates by which the pay equity plan must be posted in the workplace and implemented. The dates depend on the size of the business establishment. Private sector employers with over 500 employees must have developed and posted these plans by January 1, 1990; 100-499 employees by 1991; 50-99 employees by 1992, and 10-49 employees by 1993. Large corporations have already begun to divide all of their jobs into distinct job classes and develop a plan to evaluate them. These

large corporations often have the *in-house* resources upon which to call. But what about the smaller firms in Ontario? How will they formulate and implement plans?

To date, only Manitoba and Ontario (and the Federal Public Service) have implemented pay equity legislation. In Ontario especially, there has been a great deal of confusion about how to begin – perhaps because the Ontario Pay Equity Commission decided not to issue detailed regulations but rather a series of general guidelines. It has become a "learn-as-you-go" situation.

This book is published jointly by The Institute for Research on Public Policy, which facilitates informed public debate on issues of major public interest and seeks practical solutions to important public policy problems, and The National Centre for Management Research and Development, whose mandate is to improve the practice of management. In 1988, these two organizations held a conference to examine the problems and hurdles of developing and implementing a pay equity plan. The conference was designed to cover the federal experience of pay equity legislation, the development of the provincial legislation, the legal implications of pay equity and, most of all, the design of a system to deal with the practical realities of implementation. The presentations at this conference have been updated and included in this publication, together with other relevant articles. These are the thoughts and suggestions of the experts in the field.

This book provides a basis around which managers at the senior and executive level can begin to plan for pay equity. To begin to understand some of the complications and to note some of the suggestions of the experts is to pave the way for smooth compliance. This publication attempts to provide such an overview.

Rod Dobell
President
Institute for Research
on Public Policy

David Leighton
Director
National Centre for Management
Research and Development

May 1990

Avant-propos

La législation de l'Ontario sur l'équité salariale, la Loi 154, est entrée en vigueur le 1er janvier 1990. Elle vise à l'élimination de toute discrimination fondée sur le sexe dans le processus d'établissement des salaires. Cette loi stipule que les emplois doivent être classifiés et évalués en fonction de la *compétence*, des *efforts*, du *degré de responsabilité* et des *conditions de travail*. Si une catégorie d'emplois à prédominance féminine et une autre à prédominance masculine sont estimées être d'égale *valeur* mais que, cependant, pour la première, les rémunérations sont inférieures à celles de la seconde, il y aura lieu d'établir un plan d'équité salariale pour éliminer les différences.

D'après la Direction générale des femmes de l'Ontario, les femmes employées à plein temps dans cette province, en 1985, gagnaient en moyenne 63 cents pour chaque dollar gagné par les hommes. La Loi sur l'équité salariale a précisément été conçue pour éliminer, avec le temps et au moins partiellement, cette forme économique de discrimination. Elle prévoit un échéancier pour l'affichage et la mise en vigueur du plan d'équité sur les lieux de travail. Les dates de réalisation sont fonction de l'importance de l'entreprise. Ainsi, les entreprises du secteur privé de 500

employés et plus ont dû mettre en place et afficher le plan pour le 1er janvier 1990; celles qui ont de 100 à 499 employés devront le faire pour 1991; celles qui ont de 50 à 99 employés, pour 1992; celles qui ont de 10 à 49 employés, pour 1993. Les grandes compagnies ont déjà commencé à répartir tous leurs emplois en catégories et à mettre en oeuvre un plan pour les évaluer. Elles ont d'ailleurs souvent *sous la main* le personnel compétent pour entreprendre une telle opération, mais il n'en va pas de même pour les entreprises plus petites. Comment celles-ci vont-elles être capables de concevoir et de mettre en vigueur des plans de ce type?

À ce jour, le Manitoba et l'Ontario (avec la Fonction publique fédérale) sont les seules provinces à avoir mis en oeuvre une législation sur l'équité salariale. En Ontario, notamment, on observe une grande confusion relativement à la manière de procéder, peut-être est-ce dû à la décision de la Commission pour l'équité salariale de l'Ontario de ne pas fournir d'instructions détaillées aux entreprises, mais plutôt de leur donner une série de règles de conduite d'ordre général. Dans cette province, ce n'est que par la pratique que les entreprises pourront parvenir à s'en sortir.

Ce livre est publié conjointement par l'Institut de recherches politiques, d'une part, dans le cadre de ses efforts afin de favoriser un débat public éclairé sur les principales questions d'intérêt commun et de rechercher des solutions concrètes aux importants problèmes de politique générale, et par le Centre national de gestion, de recherche et de développement, d'autre part, dont la mission est de chercher à améliorer la pratique de la gestion. En 1988, ces deux institutions ont organisé un congrès dans le but d'étudier les problèmes et les obstacles relatifs à l'élaboration et à la réalisation d'un plan d'équité salariale. On y a examiné l'expérience fédérale en matière de législation sur l'équité salariale, ainsi que le développement de la législation provinciale en ce même domaine, les conséquences de l'équité salariale du point de vue légal et, plus spécialement, l'élaboration d'un système capable de résoudre les problèmes pratiques de sa mise en oeuvre. Les communications présentées à ce congrès ont été mises à jour avant de figurer dans cet ouvrage à côté d'autres articles sur le même sujet. L'ensemble représente les idées et les suggestions des spécialistes en ce domaine.

Ce livre constitue une source de renseignements pour les gestionnaires au niveau supérieur et de direction, à laquelle ils pourront se référer pour élaborer leur plan d'équité salariale. Ce n'est qu'en prenant conscience des complications que ce plan peut entraîner et en tenant compte des suggestions des experts que l'on pourra mettre toutes les chances de son côté. Cette publication se propose d'offrir les moyens pour le faire.

Rod Dobell
Président
Institut de recherches politiques

David Leighton
Directeur
Centre national de gestion, de recherche et de développement

Mai 1990

How to Cope with Pay Equity Legislation

David W. Conklin
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The Institute for Research on Public Policy

Introduction

Pay equity legislation imposes a new set of obligations in regard to the evaluation and comparison of jobs. Pay equity may require that the pay scales be altered within the firm. This revision of pay scales could affect the firm's future ability to hire various types of workers. The requirement to raise the relative pay scales of female-dominated job classes could also result in overall increases in payroll costs. Employee attitudes and incentives could be affected. The requirement to compare job classes can lead to extremely complex, time-consuming, and expensive analyses. It is clear that in the 1990s all those concerned with employee compensation will have to devote considerable attention to pay equity.

Pay equity legislation is far from precise in its requirements. Consequently, each firm will have to devote considerable effort to analyzing compensation programs and to deciding upon appropriate pay adjustments. Ambiguities and uncertainties are bound to arise, as well as conflicts based upon them. Managers would do well to minimize such future confrontations through careful planning and employee participation. The firm will have to live with the results of its pay equity process for many years to come.

In Canada, various forms of pay equity legislation have been implemented by the federal government as well as Quebec, Manitoba, and Ontario. This book focuses on Ontario's pay equity legislation, which is to become effective over the period 1990-1994, with the precise time depending on the firm's number of employees. The purpose of this book is to assist managers in adhering to Ontario's pay equity legislation, and to assist employees in understanding their rights in this process.

In complying with Ontario's pay equity legislation, it is important to know the views of the Pay Equity Commission. Consequently, the article by Brigid O'Reilly, Ontario's Pay Equity Commissioner, is particularly helpful. This article explains the purpose of the legislation in a broad sense, and it emphasizes the positive impact that the legislation is expected to have. The Commission is seeking to develop a dialogue with the public and thereby to facilitate the development of pay equity plans, but the Commission is placing responsibility on employers and employees for developing their own solutions. Brigid O'Reilly suggests possible amendments to the legislation in order to provide pay equity to those female job classes where a male comparative class is not present.

A serious issue that has arisen in the implementation of the legislation concerns the definition of employer. This definition is significant because the pay equity plan depends upon it. In particular, the comparison of female and male job classes is to be made within the same establishment, and so the definition of employer affects the choice of the job classes that are to be compared. The Pay Equity Hearings Tribunal has dealt with cases where the employer definition was the central issue, and Rodney D. Dale examines this subject in his article, *The Pay Equity Act: Who is the Employer?* Included in this discussion is the treatment of the employer who has establishments in more than one geographical location.

An essential part of the pay equity process is the choice of a job evaluation system. Here, a considerable number of alternative systems may be considered. The article by Carrie MacKinnon, *The Implication of Pay Equity on Job Evaluation Systems*, should assist employers and employees in arriving at a reasonable choice.

A variety of legal issues are important for pay equity, and several of these are examined by Michael McKeown. In his article,

McKeown discusses what information must be disclosed for the purpose of bargaining pay equity; whether an interested party will be granted legal status as an intervenor before the tribunal; and the role of the administrative tribunal.

It may be helpful for the reader to consider the actual experiences of an employer in establishing a pay equity plan. The case study chosen for this book is that of the University of Western Ontario, as presented by Les Ste-Marie. This case study illustrates how difficult and complicated the pay equity process can be. It is true that a small firm can reduce this difficulty and complexity through the establishment of a few broad job classes and through simplified job evaluation systems. An advantage of this case study is that it serves as a warning to the reader concerning the amount of effort that may be required if a large number of job classes are established with a very thorough and detailed job evaluation system.

Some Ontario companies are federally chartered, and as such they are also subject to the legislation of the federal government. Consequently, we have included an article dealing with the federal legislation. Lise Ouimet has outlined the experiences of the federal government in dealing with its public service unions, and her article, *Pay Equity: Management and Unions Working Together*, provides another perspective on the pay equity process.

The concluding paper by Jeffrey Gandz presents a summary overview of the issues raised by pay equity legislation. Professor Gandz presents some final warnings as well as specific recommendations concerning the process.

The Pay Equity Commission has issued a number of interpretation bulletins which seek to explain a series of technical issues connected with pay equity. The appendix to this book consists of excerpts from these bulletins. In understanding particular issues, reference to these excerpts may be helpful. The remainder of this chapter presents in summary form the issues that will be discussed more fully in the later chapters.

Establishing and Comparing Job Classes

Ontario's legislation requires that if a firm employs both men and women, then comparisons must be made between those job classes

occupied predominantly by women and those classes occupied predominantly by men. First, job classes must be established. Second, an evaluation system must be chosen for comparing the value to the firm of these job classes.

The division of jobs into separate job classes must be based on the following job characteristics: similar duties and responsibilities; similar qualifications; the same compensation schedule; and similar recruiting procedures. Jobs that have similar characteristics in regard to these criteria must be placed in the same job class for the purposes of pay scales and the pay equity plan. It will be important for managers to decide how narrowly to define the job classes, and how many job classes to establish. The creation of only a few job classes may reduce the complexity of the next step, namely comparing the value to the firm of each job class.

Once jobs have been divided into separate job classes, then the job classes must be compared in regard to four characteristics: *skill*, *effort*, *responsibility*, and *working conditions*. Each firm is free to choose the relative weights to be assigned to these four factors. It is not necessary that each factor be given an equal weight in the analyses. For example, the firm could assign weights of 40 per cent, 30 per cent, 20 per cent, and 10 per cent to each of *skill*, *effort*, *responsibility*, and *working conditions*, respectively. Some firms may choose to divide each of the four factors into subfactors, with each subfactor being assigned a certain weight. In the example presented at the end of this chapter, the skill factor is divided into five subfactors. Once the weighting system has been chosen, then usually this weighting system must be applied to each job class. It is possible that a firm may be permitted to use different sets of weights for significantly different groups of jobs. However, the attempt to use different sets of weights may give rise to conflicts with employees and appeals to the Pay Equity Commission.

If jobs have been divided into only a few job classes, then it may be possible to rank the job classes without any detailed analysis. It may be fairly simple to see which job classes are similar in value to the firm, on the basis of assigning certain weights to the four job characteristics. Then pay equity requirements come into effect only if two job classes are of similar rank or value, yet receive different pay.

If jobs have been divided into many separate job classes, then the comparison of job classes may become extremely complex and time-consuming. Job comparisons increase greatly in complexity if the job evaluation system specifies subfactors within each factor, and if these must be considered in the assignment of points and in valuing each job class. In order to make these analyses, it may first be necessary that each employee complete a detailed questionnaire, so as to ascertain the degree of each subfactor that is required in each job class. On the basis of these analyses, each job class is then assigned a total number of points. Job classes with a similar number of points would be subject to pay equity.

If it is found that job classes are equal in value and job content, yet paid differently, then a pay equity plan must be developed for the purpose of eliminating this pay differential over the coming years. Employers must then make future wage adjustments on the basis of the pay equity plan. Each firm must take the initiative in developing its pay equity plan. The Ontario Pay Equity Commission has decided not to issue detailed regulations. Rather, it has developed general guidelines that can assist in the corporate development of a pay equity plan. This places a responsibility on each manager to understand the *Act* and to conduct pay equity analyses in the prescribed manner. The example at the end of this chapter has been presented by the Pay Equity Commission as a guide for managers.

The Four Comparison Factors

The *skill* criterion is to be calculated on the basis of education, experience, and the special abilities involved in performing the job. The *effort* criterion should include both physical and mental requirements in the job. *Responsibility* is to be considered on a broad basis, covering responsibility for employees, machinery, and finances as well as decision-making authority. *Working conditions* are also to be evaluated on a broad basis, including both physical discomfiture due to noise, dirt, or danger as well as mental stress. In these comparisons among job classes it is the job that should be evaluated, not the specific qualifications of the current incumbent.

The legislation does not require that all job classes be paid on a scale that reflects these four factors. Even for "equal or

comparable job classes," pay equity is only required if one class is predominantly female while another is predominantly male. Generally a job class will be considered female if 60 per cent or more of the employees in that job class are female. Generally, a job class will be considered male if 70 per cent or more of the employees in that job class are male. Furthermore, a job that requires more of the four factors does not necessarily have to be paid a correspondingly higher amount. Rather, the pay comparisons need be made only between job classes that are "equal or comparable" in regard to some reasonable, gender-neutral combination of skill, effort, responsibility, and working conditions.

Even after pay equity is achieved, certain male-dominated job classes may be paid more than certain female-dominated job classes. However, managers must be able to justify these differences on the basis of different levels of skill, effort, responsibility and working conditions – or on the basis of differences in other specific employment circumstances like seniority or incentive programs that apply to men and women equally. Five acceptable reasons for pay differentials between comparable job classes have been explicitly permitted: a gender-neutral seniority system; temporary training programs; a merit compensation plan; red-circling; and a temporary skills shortage. The implementation guidelines in the appendix discuss these more fully. In particular, see Series 13.

Choosing A Job Evaluation System

The manager can choose among alternative job evaluation systems that are currently used by business consultants, or the manager may develop his or her own system. However, the evaluation system must be structured so as to avoid any bias against one gender. For example, the measurement of physical effort must not be calculated in a way that gives an advantage to jobs commonly held by males. In view of the imprecision in such comparisons, it may be easiest to create an evaluation system based on only a very few pay levels, with broad job classifications. By relying on broad classifications, the manager can develop ranking procedures in measuring performance and in matching pay to performance, rather than relying on detailed job criteria analyses. From a

manager's point of view, this system of job evaluation should be designed so as to be relatively easy to administer, both in implementation and maintenance; it should be fairly easy to communicate to employees; and it should already have been tested.

Each manager may face unique difficulties in evaluating job classes. Of special importance will be the weight assigned to each of the four job factors. Comparisons among job classes will involve the difficulty that each job class may tend to apply its own preferences in weighting the Commission's four job factors. For example, physical plant employees may place a lower priority on know-how and problem solving than office/clerical employees. Which set of weightings should be used for comparisons among job classes? This question will pose special problems for many managers. The Pay Equity Commission places great emphasis on the requirement that these job evaluations and comparisons must be "gender-neutral." There must be no implicit advantages given to the male-dominated job classes in the delineation of job classes, in the choice of evaluation system, in the collection of information about jobs, or in the weighting of the four evaluation factors.

Additional Problems

It may be helpful to follow several additional principles in developing a pay equity plan. First, in view of the importance of the plan and the employee attention it will attract, it would be wise to focus on general internal equity as well as male-female equity. Of concern should be the internal inequities within the same gender whether male or female, even though this perspective is not part of the legislation. Second, it may be wise to involve employees in developing the pay equity plan. In choosing a pay equity committee, the manager may wish to consider the blend of personalities and experience of these individuals.

Ontario's legislation places an annual cap of one per cent of payroll on the total adjustment that a firm must make, and the implementation of this cap on annual adjustments will likely give rise to frequent disputes. Managers must decide how this adjustment fund is to be allocated among the different job classes, and how it is to be allocated within each job class. Disputes may be particularly difficult if management is allocating its annual adjustment fund between union and non-union employee groups.

Of course, it is likely that once the pay equity plan is posted certain employees will wish to achieve a more rapid progress, and so the employer may find it difficult in practice to restrain the cost of pay equity improvements to the annual cap of one per cent of the payroll.

Pay adjustment must involve pay increases only. No individual's pay is to be reduced as a result of the pay equity plan. Yet other employees may be upset by the required adjustment, and so it may be necessary to increase their wages as well. Consequently, the pay equity adjustments may in practice lead to more substantial pay increases than would have been implemented without pay equity.

Dealing With Unions

Ontario's legislation imposes a "duty to bargain", and so the role of unions will be particularly important. If employees are represented by a union, then the employer and bargaining agent will jointly negotiate a pay equity plan. Each separately certified bargaining agent or union is entitled to negotiate its own pay equity plan. This will likely require a separate pay equity plan for each bargaining unit. Nevertheless, an employer may be obliged to maintain consistency among its pay equity plans. In particular, if there are no equivalently valued male-dominated job classes to be matched with a given female-dominated job class, then that female-dominated job class may be compared with male-dominated job classes in the employer's other pay equity plans.

The *Act* lists specific issues which can be negotiated, including the method used to compare job classes; the definition of male and female job classes; and the rate and timetable for wage adjustments. This negotiation process can occur at the same time as collective agreements, or separately. If a pay equity plan cannot be negotiated prior to the date prescribed in the *Act*, a review officer from the Pay Equity Commission will attempt to reach a settlement. Failing a voluntary settlement, the officer will impose a settlement, which can be appealed by either party to the Commission Tribunal. All non-unionized employees in an establishment can be covered with a single pay equity plan.

Conclusion

The concept of pay equity requires that a manager compare different jobs and offer equal pay for jobs of equal value. It is likely that the 1990s will bring new legislation in many jurisdictions that will impose legal requirements in regard to these comparisons and pay scales. Ontario's legislation is important because it affects many managers directly and also because it will likely be the basis for legislation in other jurisdictions.

Managers will have to devote considerable attention to pay equity. The impact on pay scales and total payroll costs may be significant. Furthermore, the comparisons among job classes involve uncertainties and subjective interpretations. Pay equity legislation, itself, will probably be modified over time, requiring new adjustments. Managers will likely be challenged frequently in regard to their decisions. The process of achieving pay equity will not be easy or straightforward. Hopefully, the following chapters will assist in this process.

Example: LMN Manufacturing Limited[1]

The method of comparison used was Point Factor Job Evaluation.

This method results in a point value being assigned to each job class.

Points were grouped together as follows: between 100 – 125, 126 – 150, and so on.

A set of factors (given below) was identified. Those criteria represent those aspects of jobs which were deemed to be most important. The factors used were a composite of skill, effort, responsibility and working conditions as required by the *Pay Equity Act*.

Each factor was broken down into different levels.

Each factor was weighted so that those of most importance were given higher weightings (see below). Based on the number of levels of the factors and their weighting, each level of each factor was worth a certain number of points. Each factor was weighted so

1 This example is taken from *The Pay Equity Implementation Series*, No.15, The Ontario Pay Equity Commission, January 1989, pp. 15-20.

that those of most importance were given a higher weighting. A description of each job class was compared against each factor and points were assigned. The total number of points allocated to each job class based on the various factors resulted in a total number of points per job class.

When choosing factors the Human Resources Department ensured that they were not biased according to gender and that they could be applied equally to men and women. For example: working with people (a feature common to the female job classes) and working with machines (a feature common to male job classes) were equally valued.

The criteria factors and their weightings are as follows:

SKILL	40%
working with people	10%
working with machines/equipment	10%
working with data	10%
writing standard English	5%
writing technical English	5%
EFFORT	30%
physical effort	10%
mental effort	10%
complexity of duties	10%
RESPONSIBILITY	20%
contact with others	7%
handle confidential data	4%
supervisory duties	9%
WORKING CONDITIONS	10%
adverse working conditions	5%
environmental influences	5%

In accordance with these weightings, the firm assigned a certain number of points to each subfactor. Each job class was then assigned a total number of points, based upon the job requirements in regard to each subfactor. This total number of points represents the value of the job class to the firm.

Comparison Results

Female Job Class

Job Class	Job Value	Job Class Salary Rate	Job Class Benefits Rate	Total Job* Class Rate
Secretary	206	$6.19	$2.06	$8.25
Receptionist	150	$5.20	$2.40	$7.60
Typist	172	$6.30	$2.10	$8.40

* Job rate is defined by the *Pay Equity Act* Section 1(1) as the highest rate of compensation (salary plus benefits) for a job class.

Male Job Class

Job Class	Job Class Value	Job Class Salary Rate	Job Class Benefits Rate	Total Job* Class Rate
Repairperson	200	$7.80	$2.60	$10.40
Janitor	150	$6.25	$2.75	$9.00
Computer Operator	180	$7.50	$2.50	$10.00

Differences in Compensation for Job Classes of Comparable Value

The following female and male job classes were found to be of equal or comparable value:

Female Job Class	Female Job Class Rate	Male Job Class	Male Job Class Rate	Differences in Compensation at the Job Rate*
Secretary	$8.25	Repairperson	$10.40	$2.15
Receptionist	$7.60	Janitor	$ 9.00	$1.40
Typist	$8.40	Computer Operator	$10.00	$0.60**

* This will vary based on where individual incumbents are on the salary range/ step structure.

** $1.00 difference is due to permissible difference. See next chart.

Permissible Difference

Female Job Class	Male Job Class	Difference Between Male and Female Job Rate	Portion of the Job Rate that is a Permissible Difference*	Differences in Compensation Taking Permissible Differences into Account
Typist	Computer Operator	$1.60	$1.00	$0.60

* The permissible difference is based on a "skills shortage" as per Section 8(1)(e) of the *Pay Equity Act*. The employer has evidence on hand to indicate that the difference in wages of $1.00/hour would impact on the attraction and retention of employees performing this work.

Pay Equity Adjustment

Section 13(4) of the *Pay Equity Act* requires that one per cent of the total payroll be used for pay equity adjustments.

The estimated total payroll of LMN Company for 1992 is $2,011,800.

The estimated amount to be spent in 1993 for pay equity is $20,118.

The *Pay Equity Act* states that the female job class with the lowest job rate (Receptionist) shall receive increases in compensation that are greater than the increases under the Pay Equity Plan for other female job classes (Secretary).

This is to continue until such time as the job rate for the Receptionist job class is equal to the job rate of the Secretary or the job rate required to achieve pay equity.

The annual pay equity adjustment is the adjustment per hour (this will vary based on where individual incumbents are on the salary range/step structure) multiplied by the number of hours per week times 52 weeks in a year. At LMN the Secretary, Receptionist and Typist work 36.5 hours per week or 1,898 hours per year (36.5 X 52).

Female Job Class	Present Job Rate	Adjustment for 1993	Adjusted Job Rate for 1993	Remaining Pay Equity Adjustment Based on Current Job Rate
Secretary	$8.25	$0.18	$8.43	$1.97
Receptionist	$7.60	$0.50	$8.10	$0.90
Typist	$8.40	$0.18	$8.58	$0.42

Costs of Adjustments

Female Job Class	Hourly Pay Equity Adjustment	Number of Hours Worked per Year	Yearly Pay Equity Adjustment*	Number of Employees	Total Pay Equity Cost (1992)
Secretary	$0.18	1,898	$341.64	20	$6,832.80
Receptionist	$0.50	1,898	$949.00	5	$4,745.00
Typist	$0.18	1,898	$341.64	25	$8,541.00
This amount equals 1% of payroll.					$20,118.80

* This will vary based on where individual incumbents are on the salary range/step structure.

Pay Equity: The View from the Commission

Brigid O'Reilly
Commissioner
Pay Equity Commission

Women in Canada earn on average 64 per cent of what men do. In a perfectly fair world, they would pay just 64 cents on the dollar for all the goods and services they buy, but that obviously does not happen.

The *Pay Equity Act* passed by Ontario in 1987 will bring an element of fairness to women's economic lives. This *Act* will eliminate the one-quarter to one-third of the wage gap which has been created by gender discrimination in wage-setting. The rest of the gap is due to other factors: different levels of unionization between men and women; women's shorter seniority in the labour force; and their lower levels of education and training, especially in the area of the skilled trades.

This legislation speaks directly to equity for women. It says that it is unfair for a childcare worker to make thousands of dollars less than a zookeeper, or for a high school secretary to make thousands less than an audiovisual technician. This legislation means that hundreds of people across this province have had to come to terms with the challenge of paying women in a way that is free from discrimination. The discrimination was, in most cases, not intentional but the result of long-held, widespread attitudes

that undervalued the skill, effort, and responsibility that women demonstrate in their work and the working conditions in which they perform.

By recognizing the true value of women's work, the legislation will also create a confidence in women that will allow them to push the envelope of equality to other issues: the economic balance of the family and changes in the division of labour for housework and child-rearing.

Pay equity has effects that reach beyond the issue of equity for women, effects that speak to the kind of labour force we in Ontario want to have five, ten or twenty years from now. There is a need in many, labour-starved, geographic areas for employers to pay fairly in order to attract and maintain a skilled workforce. As the baby boom ends, we can expect more shortages to appear: fair pay will help address the shortage in female-dominated occupations.

A related issue is this: if we are not prepared to pay women's jobs fairly, then people will not invest the education, time and dollars to train for the skills needed to do those jobs. Current shortages in certain occupations will become critical, and shortages in other occupations will start appearing. Without pay equity, we can expect critical shortages in jobs that women now do, jobs that we have perhaps taken for granted and have underpaid but which make our economy work: clerical, secretarial, nursing, childcare, and retail jobs.

Nor can we ignore the impact of pay equity on the incomes of mother-led, sole-support families. In 1989, more than half of the Canadian children who were growing up in mother-led families were growing up in poverty with ongoing health problems, reduced life-expectancy, and poor performance in school. When these children become adults, we will pay a high price in increased social welfare costs and in a less skilled, less robust workforce.

In Sweden, where the wage gap is only about 11 per cent, fewer than one in ten children of mother-led families grows up in poverty. Given this, it seems clear that Sweden will be better positioned than Canada in a high-tech, global, economic environment.

The importance of a woman's pay cheque to her family is no longer disputed. U.S. figures show that women now contribute about one-third of family income. Despite the influx of women into the workforce in the last two decades, family income has still declined by eight to ten per cent. The decline would have been

greater had women not been working, and would have been less had there been two incomes and not an income and two-thirds.

Gloomy predictions about pay equity's effects on women's employment have not materialized. Research from Minnesota where pay equity was implemented in the public sector in 1983, shows that the effect of pay equity on women's employment was, in fact, positive. The ratio of female to male employment rose from 80 per cent to 85 per cent. The effect on occupational segregation was not to increase it, as some critics of pay equity had predicted; it had no effect at all.

While primarily defined as an equity issue for women, pay equity will have significant and demonstrable effects on the future of our labour force and our economy. At the Pay Equity Commission, we have been helping people to implement this important piece of legislation. Our mission statement adopted in early 1988, just after proclamation of the *Pay Equity Act*, was to support those affected by the legislation, with information and education, policy and research and, where necessary, with conciliation and appeal. The legislation was designed to allow pay equity to be implemented within organizations in a self-managed manner. Consequently, from the outset we put emphasis on education, and on giving people the tools they needed to do the job.

We published a series of guidelines describing the provisions of the *Act* in simple, user-friendly language. We put out, in addition to a basic information kit, a specialty publication for small workplaces and a manual on how to evaluate jobs in a gender-neutral way. We publish a monthly newsletter, which is sent out to everyone on the large mailing list we have developed. We have also produced two training videos.

A comprehensive training course was developed in conjunction with Ontario's community colleges, and each college has had instructors trained by the Commission in the delivery of this course. We held a series of six conferences in early 1988, with about 3,000 people attending, and have held another series of conferences, co-sponsored with the colleges, which have attracted thousands of people. Commission education officers have held hundreds of seminars and workshops; altogether we have reached close to 50,000 people. The Commission staff has done its work in a pro-active way, developing training opportunities in the public and private sectors and with employee groups. We have also sent a

display on tour around Ontario, reaching women's shows in key communities in the province.

The policy and research arm of the Commission has worked closely with the education staff in their activities, in addition to developing their own research projects. A major project has been the preparation of a report recommending amendments to the *Act* which will address the issue of female job classes without male comparators in predominantly female sectors of the economy. The legislation required that the Commission study this issue and we made our final report in October 1989.

We recommended that employers be required to add one more step to their pay equity process in such a way that every female job class could benefit from pay equity, and not just those jobs which found a male comparator. We described a choice of methods, including proportional comparisons, average internal adjustments, proxy comparisons or average external adjustments. We further recommended that those job classes captured by any such extension of the *Act* would receive an accelerated first year increase so that they could catch up to those job classes that had found comparators in the first round.

For our part, it only makes sense that once the principle of pay equity is established, it be extended the whole way. We also said that extending the benefits of pay equity would buttress what has already been achieved. The Government, through the Minister of Labour, told us that it would look very seriously at our recommendations.

The third arm of the Pay Equity Office, as distinct from the Pay Equity Hearings Tribunal, is review services, or the conciliation, mediation, and arbitration arm. The review officers have given parties assistance with issues throughout the plan preparation stage and have offered mediation where issues are in dispute. In a few cases they have issued orders, but their bias is towards negotiated, rather than arbitrated, settlements.

The Pay Equity Hearings Tribunal began hearing its first cases in 1989 and now has a full schedule of hearings. Its decisions are contributing to the case law of pay equity.

How has all this activity affected implementation?

Late in 1989, we commissioned an independent telephone survey, by Insight Canada Research, of 200 private sector and 200 public sector organizations. The results showed that 81 per cent of

those surveyed would either meet the January 1, 1990 deadline or be within a month of it. It also showed that only one per cent of employers cited budget problems as an impediment to pay equity; the largest obstacles mentioned were problems scheduling meetings with consultants or bargaining agents or misjudgments of how long it would take to do pay equity. Thirty five per cent of those surveyed said they would not be making any wage adjustments, a figure which underscores the need for amendments concerning predominantly female workplaces.

The survey showed that the spirit in the province is towards compliance with the pay equity legislation and that the difficulties employers may be encountering are not financial but logistical. We were greatly encouraged by the results of the survey.

As the deadline passed, review services began to receive notification from those employers and bargaining agents who had missed the deadline. In each case a review officer has been assigned to monitor the progress being made. Only in cases where the parties ran into difficulties or where there was clearly no determination to achieve pay equity would the review officer intervene directly. With wage adjustments in the public sector retroactive to January 1, 1990, and with those in the private sector not scheduled to begin until January 1991, the bias is towards allowing practitioners to reach their own solutions rather than intervening prematurely.

In the meantime, the Commission turned its attention towards ensuring that the complaint process for employees was effective. We needed to make sure that working women knew about the legislation and were encouraged to talk to their employers or to call us. We adopted several strategies. The first was a mass media campaign in transit systems across the province and in Ontario daily newspapers. The ad featured a young mother in working garb carrying a small child. The heading read "Woman. Breadwinner." The ad prompted many women to call for more information. We took the message into the ethnic communities. We distributed almost 150,000 information leaflets in 11 languages to ethnic centres across the province. We also placed our ad in ethnic newspapers in Ontario. We mailed 3,000 posters to libraries, credit unions, community information centres, liquor stores and government storefront offices. We ran weekend pay equity clinics in public libraries. And we enlisted the help of

community centres and women's centres to act as referral agencies. We offered training to the constituency assistants of MPPs and video packages for their cable shows. We also trained the lawyers in Ontario's legal aid clinics.

This outreach to working women will be seen and heard by others, including employers affected by future phases of pay equity. The most pressing are those private sector employers with between 100 and 499 employees in Ontario who are due to post January 1, 1991.

We have heard – from the days when the *Act* was first being debated, to focus group meetings in 1987, to feedback received in our educationals, to the concerns expressed by representatives of business – that the needs of small to medium-sized businesses were far different from those of larger businesses which posted in January 1990. Accordingly we set ourselves the task of identifying what those needs were and producing materials which would meet them.

Our first task was to remind the employers scheduled to post January, 1991 of their deadline. This January we sent a letter to the CEOs of these organizations, restating the legislative obligations and offering them the Commission's educational and information services. We enclosed a business reply card for ease of reply.

We also set out to see what the needs of these employers were. Our 1989 publication, "Pay Equity in Small Workplaces," had been very well received. It gave readers a choice of several methods of job comparison which were much simpler than full-scale job evaluation, as well as exercises readers could do to adapt the systems for their own workplace. Our goal for our work in 1990 was to continue this successful model of hands-on, practical assistance for small employers, including new materials and new workshop designs. We enlisted the support of the community colleges in this initiative, encouraging them to hold pay equity breakfasts so that people from these smaller firms could squeeze in some time for a pay equity briefing. We also trained the community college instructors in the delivery of workshops especially designed for small and medium-sized businesses. During the last year or so, more and more smaller employers, who are not due to post until January 1991, were attending our educationals, a full year and a half ahead of posting. This was a

very encouraging sign. This desire for compliance coupled with our thrust to small workplaces education will mean a successful pay equity initiative in this sector.

What's happening with pay equity in Ontario is of worldwide interest. We are the only jurisdiction in the world that makes a positive requirement on employers in the private sector to implement pay equity. As a result we have had inquiries and visits from many countries including Japan, New Zealand, Australia, Great Britain, and the United States. All Canadian provinces and territories are interested in the legislation. In the end, we will be judged by how much he wage gap has been closed.

The Pay Equity Act: Who is the Employer?

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The fundamental issue in the first decisions released by the Pay Equity Hearings Tribunal has been the determination of the appropriate criteria for defining the employer in the context of the *Pay Equity Act*. This issue has been important because the pay equity plan depends upon it. In particular, the comparison of female and male job classes is to be made within the same establishment, and so the definition of employer affects the choice of the job classes that are to be compared.

The *Act* requires every employer to establish and maintain compensation practices that provide for pay equity in every establishment of the employer. The *Act*, however, does not define employer. Perhaps the legislators felt that the concept of "employer" was self-evident and the tests for determining the "employer" were already well-established in the context of labour relations.

A perusal of the Green Paper released in November of 1985 by The Honourable Ian Scott, Minister Responsible for Women's Issues, would imply that the provincial government did not anticipate any difficulties in determining the employer. The

Green Paper served as a focus for public discussion leading to the development of the pay equity legislation.

The Green Paper examined in detail one component of employment equity which came to be known as equal pay for work of equal value – a measure which is specifically aimed at rectifying the historical undervaluation of women's work. Job comparisons were to be confined to an employer's establishment, thus obviating the concern that an industry-wide or province-wide wage-setting system was under discussion. The Green Paper stated that gender-based comparison was required only within a particular establishment. The definition of "establishment" was therefore, a critical policy decision. The government acknowledged in the Green Paper that it was aware that in some establishments where women were paid low wages, no comparisons would be available. Remedies for such situations were considered beyond the scope of the Green Paper.

A basic premise of the Green Paper was that implementation of pay equity would be limited to comparisons within an employer's establishment. The Green Paper considered what would be an appropriate definition of an employer's establishment, and more particularly, it considered whether the definition should be based upon geographic, functional, corporate factors, or a combination of those and other factors. The definition of "establishment" which was eventually adopted for the *Pay Equity Act* is as follows:

> "Establishment means all of the employees of an employer employed in a geographic division or in such geographic divisions as are agreed upon under Section 14 or decided upon under Section 15."

The *Act* further defined "geographic division" as meaning a county, territorial district, or regional municipality.

Although the purpose of the *Pay Equity Act* is to redress systemic gender discrimination in compensation for work performed by employees in female job classes, the *Act* specifically limits or restricts comparisons between female and male job classes to the particular establishment of an employer. Pay equity is achieved under the *Act* when the job rate for the female job class that is the subject of the comparison is at least equal to the job rate for a male job class *in the same establishment* where the work

performed and the two job classes are of equal or comparable value. Thus, if an employer operated businesses in both the City of Toronto and in the City of London, comparisons of wage rates could not be made between the two businesses as they are separate establishments for the purpose of the *Act*.

The first two cases decided by the Pay Equity Hearings Tribunal (001-89 and 002-89) involved applications by the Ontario Nurses Association to determine who was the employer for the purposes of the *Pay Equity Act*. The issue before the Tribunal in the first case was whether or not the Haldimand-Norfolk Regional Police Force should be included in the establishment of the Regional Municipality of Haldimand-Norfolk for the purpose of pay equity. The issue before the Tribunal in the second case was whether the employer of the nurses employed at the Middlesex-London Health Unit included the City of London and the County of Middlesex.

The cases were decided by different Hearings Tribunals, but the criteria which were accepted as appropriate to determine the employer were the same in each case. Although the facts of each case had remarkable similarities, it is interesting that the Hearings Tribunals came to different conclusions in their cases.

The Hearings Tribunals in both cases accepted the principles that the *Pay Equity Act* contains elements of anti-discrimination legislation as well as a labour relations component. It was recognized that in the construction of such legislation, the words of the *Act* must be given their plain meaning, but it was equally important that the rights enunciated be given their full recognition and effect. Since every Act is deemed to be remedial, it was acknowledged that the interpretation must receive such fair, large, and liberal construction as would best ensure the attainment of the object of the *Act* according to its true intent, meaning, and spirit.

The Hearings Tribunal in the *County of Middlesex* case stated at paragraph 85, "In our view, the Act's silence regarding the meaning of employer does not lead us to the conclusion that the legislature intended that the Tribunal adopt the traditional labour relations tests for defining that term. As the Tribunal noted in *Haldimand-Norfolk*, where the legislature intended to limit the Tribunal's jurisdiction, it did so. For example, the term "establishment" is assigned a specific geographic limit. As well, the

definition of bargaining agent makes reference to the Labour Relations Act. In our view, therefore, had the legislature intended that the Tribunal limit its analysis of the meaning to be attached to the term employer to that found in labour relations jurisprudence it could have done so explicitly."

The Hearings Tribunal in each case reviewed the labour relations criteria for determining the issue of employer and in particular those criteria outlined in the *York Condominium* decision (*Labourers International Union of North America, Local 183* v *York Condominium Corporation* [1977] OLRD reports, October 645.) which are listed as follows:

1. The party exercising direction and control over the employees performing the work;
2. The party bearing the burden of remuneration;
3. The party imposing the discipline;
4. The party hiring the employees;
5. The party with the authority to dismiss the employees;
6. The party who is perceived to be the employer by the employees;
7. The existence of an intention to create the relationship of employer and employees.

In *Haldimand-Norfolk*, the Tribunal established the following criteria or tests for determining the identity of the employer:

1. *Who has the overall financial responsibility?*

   Indicia of this test include:

   - Who has the responsibility for the budget?
   - Who bears the financial burden of compensation practices, and the burden of wage adjustments under the *Act*?
   - Who is responsible for the financial administration of the budget?
   - What is the shareholder investment or ownership?

2. *Who has responsibility for compensation practices?*

   The indicia for this criteria include:

   - Who sets the overall policy for compensation practices?
   - Who attaches the value of a job to its skill, effort, responsibility, and working conditions?

- What is the labour relations reality, who negotiates the wages and benefits with the union or sets the wage rate in a non-unionized setting?

3. *What is the nature of the business, the service, or the enterprise?*

   Within this test, the following are helpful indicia:

   - What is the core activity of the business, service, or enterprise?
   - Is the work in dispute integral to the organization or is it severable or dispensable?
   - Who decides what labour is to be undertaken and attaches that responsibility to a particular job?

4. *What is most consistent with achieving the purpose of the Pay Equity Act?*

If there is more than one possible employer, it assists the Tribunal in its determination to make reference to the purpose and objectives of the *Pay Equity Act, 1987*.

The Hearings Tribunal in the *County of Middlesex* case stated at paragraph 92, "It is important to note that the Tribunal clearly stated that these tests were not all encompassing. Rather, there was a recognition that future cases might necessitate amendments to those tests. Nevertheless, we are of the view that these criteria are particularly appropriate in determining the identity of the employer in this particular case."

The *Haldimand-Norfolk* decision stirred considerable controversy amongst lawyers practising in the field of employment law. The decision of the Hearings Tribunal in *Haldimand-Norfolk* was not unanimous. The dissenting member of the Tribunal, Sharon Laing, referred in her dissent to the structure of the *Act* being precise in its targets and remedies. The Tribunal's role is to ensure the achievement of pay equity within the limitations of the Statute. She stated at paragraph 8 of her dissent, "Finally, accepting the majority decision in this matter is to attach to the Regional Municipality the responsibility for establishing and maintaining compensation practices that provide for pay equity, as required by subsearch 7(1) of the *Pay Equity Act, 1987*. Such responsibility contradicts the well established labour relations reality between the Regional Board of Commissioners of Police and the Regional Police Force."

The Hearings Tribunal in the *County of Middlesex* case were unanimous in the conclusion which they reached after weighing all of the evidence and applying the criteria which they considered to be appropriate. In reference to the *Haldimand-Norfolk* decision, the Hearings Tribunal in the *County of Middlesex* stated at paragraph 128, "The Tribunal in *Haldimand-Norfolk* held at paragraph 57 that: where there is more than one possible employer, the Tribunal should decide what is necessary, fair, and workable within the structure of the *Pay Equity Act, 1987* and should make a finding that best serves the needs of those the *Act* is aimed at benefitting.

We agree with this principle. We would only add that in deciding what is necessary, fair, and workable, we must not ignore the evidence, or lack of it, and come to a determination for which there is no evidentiary basis."

An application for judicial review of the *Haldimand-Norfolk* decision was heard by the Divisional Court who released their reasons on the 23rd day of November 1989. Although the Divisional Court dismissed the application for judicial review, Mr. Justice McKeown, who delivered the Reasons for Judgment, made a number of interesting and insightful comments. His Lordship firstly acknowledged that the Tribunal was protected by a strong private clause in Section 30(1) of the *Act* which reads as follows:

> "The Hearings Tribunal has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any manner before it and the action or decision of the Hearings Tribunal thereon is final and conclusive for all purposes."

Mr. Justice McKeown stated at page 8 of the decision that the Court can only review a decision where the Tribunal has exceeded its jurisdiction by making a patently unreasonable error of law in the performance of its function. His Lordship then referred to a decision of the Supreme Court of Canada released October 26, 1989, delivered by Mr. Justice LaForest in *Paccar of Canada Limited* v *Canadian Association of Industrial, Mechanical and Allied Workers, Local 14*, which held that the Tribunal has the right to make errors, even serious ones, provided it does not act in a manner so patently unreasonable that its construction cannot be rationally supported by the relevant legislation and demands

intervention by the Court upon review. This restricted scope of review requires the Courts to adopt a position of deference to the decisions of the Tribunal. The Courts must be careful to focus their inquiry on the existence of a rational basis for the decision of the Tribunal and not on their agreement with it.

Mr. Justice McKeown concluded at pages 8 and 9, "the Tribunal reached its decision on a rational basis and even though it is not necessarily a decision which I would have arrived at, it is not patently unreasonable under the Act." Finally, Mr. Justice McKeown stated that the circumstances of the *Haldimand-Norfolk* case were abnormal and there would not be a large number of cases where the *Act* tests would produce a different employer.

It is submitted, with the greatest of respect to the Honourable Members of the Divisional Court who reviewed the *Haldimand-Norfolk* decision, that the factual circumstances in the *Haldimand-Norfolk* case are not unusual but rather commonplace, particularly in the public sector where funding and control are often intermingled between various levels of government. The four criteria established in the *Haldimand-Norfolk* case may also have a potential impact upon private sector corporations who are engaged in joint ventures or companies that operate a number of different businesses within the same geographic region. The corporate veil may have been lifted for the purposes of implementing the *Pay Equity Act, 1987*.

It should be considered that the evolution of the principles which are emerging under this legislation are in the embryonic states. Future Hearings Tribunals are not bound by the principle of *stare decisis*. There is a specific provision enshrined in Section 30(2) of the *Act*, which provides as follows:

> "The Hearings Tribunal may at any time, if it considers it advisable to do so, reconsider a decision or order made by it and vary or revoke the decision or order."

Thus, it is possible that future Hearings Tribunals may refine and develop the present criteria for identifying the employer in the pay equity context. The Hearings Tribunals will no doubt continue to strive for a definition which is flexible, not exhaustive, and yet consistent with the common sense and practical implementation of the *Act*. The criteria should not be disembodied from the *Act* but rather should be defined in the shadow of the scheme

and purpose of this legislation, to redress gender discrimination in the compensation of employees in female job classes in Ontario.

The Implication of Pay Equity on Job Evaluation Systems

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Job evaluation – for any but the smallest employer in Ontario – may well be the biggest hurdle in implementing pay equity. For the *Pay Equity Act* puts tremendous pressure on this one mechanism to correct a myriad of old wrongs.

First came *equal pay for equal work* – which was really more a salary administration than a job evaluation edict – two individuals working side by side doing work that is essentially the same – two teachers, two truck drivers, two secretaries – had to be paid on the same basis regardless of sex. An extension of this principle led to *equal pay for substantially the same work* – a mail clerk compared to a file clerk. In Ontario, with the *Pay Equity Act*, we are now faced with *equal pay for work of equal value* – which mandates the comparison of jobs which appear to be dissimilar. The legislation now imposes the requirement to determine the relative size, worth or value of jobs which are gender-dominant – on the basis of four factors – skill, effort, responsibility and working conditions. A receptionist may now be compared to a machine operator or a senior lab technician to a junior engineer. Employers may choose either to develop or select an established, formal system of job measurement.

The *Pay Equity Act* itself, it must be remembered, does not mention job evaluation specifically. Instead, it asks employers to engage in a process of job comparison – and that that comparison be done in a way which is gender-neutral.

For most employers – and for most compensation professionals – this term is synonymous with job evaluation. Job evaluation is the term I will be using throughout this paper, rather than job comparison.

In the selection or development of a job evaluation system, the Ontario *Pay Equity Act* states that four criteria must be considered:

1. It must measure jobs on the four essential factors defined in the legislation.
2. It must be applicable – at least in theory – to *all* jobs.
3. It must focus on the job, not the incumbent – performance, skills, gender, education, service or other idiosyncratic characteristics or the market value of the job and current salary of the incumbent are to be ignored.
4. It must be free of gender bias – in its design and application. Both the system and its application must provide for the measurement of all the dimensions of both typically male and typically female jobs. Regardless of the job, there must be an equal opportunity to award points. Neither the factor definitions nor weightings should penalize any type of job, but recognize what is important for the satisfactory performance of all jobs.

In addition, from a management point of view, ideally this system of job evaluation should also be relatively easy to administer – both in implementation and maintenance; it should be fairly easy to communicate to various stakeholders – both employees and managers – as well as in the posting of the pay equity plan; and it should already have been tested, ideally in an organization similar to your own.

That is what the legislation requires. But many job evaluation approaches have been used for years. What effect does this legislation have on the current systems?

Job evaluation systems have traditionally fallen into one of the following four gross categories: Job Ranking, Grade Description,

Factor Comparison, and Point Factor Comparison. I shall assess their strengths and weaknesses for any organization.

Job Ranking – as it suggests, rank orders whole jobs on the basis of their importance to the organization, or general difficulty. A hierarchy of jobs is developed based on job titles or a brief description of job duties and responsibilities. It is most appropriate in a "homogeneous" group of similar jobs such as clerical job families – and is relatively easy to install and administer. Its fundamental weaknesses are that the ranking can be influenced by the existing wage structure or current incumbents – acting as justification for maintaining the status quo and that, furthermore, it lacks clearly defined criteria for comparing jobs – especially across groups or families of dissimilar jobs – and is unlikely to be applicable to all positions in the organization. Finally, as no attempt is made to evaluate specific job requirements, such as the skill or knowledge required, responsibility, etc. – whole job ranking is not, strictly speaking, a job evaluation technique, and is therefore not acceptable for Ontario pay equity purposes.

A variant of this approach is the *Grade Description* (or job classification) method in which the overall job is measured against a pre-determined scale consisting of several degrees of job worth. Evaluators compare each job against the scale and slot it into the grade which matches its definition most closely. It is applicable where the levels of difficulty of work are readily identifiable, and can be easy to install and administer. However, it is ineffective where the levels of work are *not* readily identifiable and it may not encompass a wide range of occupational groups on the same standards. It may be inflexible as positions change, and in considering the whole job rather than its component parts, would not be using the legislated factors to measure jobs.

Compensable factor-based methods, such as *Factor Comparison, Point Methods*, and *Point Factor Comparisons*, differentiate among jobs on the basis of identifiable factors common to all jobs. Compensable factors are measurable qualities, features or requirements. Jobs are analyzed and key compensable factors are selected, defined and weighted.

Under the *Factor Comparison* method, jobs are measured by making judgments concerning which jobs contain more of certain compensable factors than others. Key jobs or benchmarks are selected and broken down into their factors. The factors are

weighted by percentage or dollar amounts. The other jobs are compared to these benchmarks on a factor-by-factor basis and ranked accordingly. The results are combined and assigned a numerical value. This approach is generally flexible as the factors are determined in the organization's context. However, its strength is also its weakness – it relies heavily on the acceptance of the existing *value* of the key jobs, and any internal inequities or gender biases are perpetuated. It can also be time-consuming to administer. It may be possible, however, to use a factor comparison method for pay equity purposes, provided care is taken to avoid simply replicating the status quo.

The *Point Factor Comparison* method of job evaluation is the most widely used form of job evaluation. A rating scale is constructed for each factor, which includes a definition of the factor, several defined divisions or degrees for each factor, and a point factor for each such degree. This system involves breaking jobs down and grading them according to compensable factors and subfactors. Each job gets a numerical score on each of these factors. The scores are added up to obtain the value of the job. The strength of this approach is that it permits the comparison of a wide range and diversity of jobs. It can respond to job and organization structure change over time. However, despite its apparent objectivity, this approach too, involves significant judgment in selecting the factors and assigning points. It may be costly to purchase and administer. The point factor approach has been used for pay equity purposes in a number of jurisdictions.

Computers can be an effective aid to the job evaluation process. Computer-assisted job evaluation is a productivity tool – and it can speed up the job evaluation process significantly and it can be an effective record-keeping device. It is important to note, however, that little gain in objectivity is made through the use of computer-assisted evaluation methods. The software that generates job ratings or rankings, or assists the user in this task, merely reflects the judgments of the software developers. Thus, the evaluations are only as good, or as fair, as the underlying system and should be validated by a knowledgeable committee or evaluator. Validation should include committee-established evaluations for benchmark positions. These benchmark evaluations can form the framework for subsequent computer-generated evaluation. At this point, the computer-assisted job evaluation system can be implemented.

Computers can generate a framework of evaluations, but the Committee should reconvene to assess the reasonableness of the results.

In both design and application, job evaluation systems – even those which are based on comparable factors – need to be examined for *gender bias*. A system which is based on principles which eliminate or minimize bias will, for example, define the skill or knowledge required and not emphasize education or experience. Calculations of the education or training required for a job tend to be arbitrary and are often subjective. Such calculations about a job are often made on the basis of information about the current or previous incumbent's background and may have little or no relationship to requirements to perform the job. In addition, educational requirements are often overstated to justify an increase in pay, or the maintenance of the status quo that may not be appropriate given the nature and complexity of the job and the skills required; using education and experience as key criteria may also lead to higher pay for individuals whose skills have been acquired through formal training and lower rates of pay for those whose skills are assumed to have been derived from what is often perceived as innate ability. Thus a childcare worker's job, occupied predominantly by women, may be evaluated lower than a male-dominant job like a trades helper. This would be based on the assumption that a childcare worker's job requires no specialized skill, while a trades helper requires special training.

A gender-neutral job evaluation system recognizes human relations skills as well as specialized technical and managerial skills. This ensures that the caring, motivating and nurturing skills often associated with traditional female occupations (nurse, daycare worker, teacher, social worker) are recognized as compensable skills.

An especially important component in any job evaluation system to examine for gender bias, is the way in which working conditions are measured – the physical effort associated with the storekeeper position, the sensory attention required by the word-processing operator, the physical environment of the emergency ward nurse, the truck driver, the cook, the mental stress of the palliative care nurse, the social worker, the teacher, the fire fighter, commodity trader or production line assembler – all these

positions need to have their working conditions appraised on a common and gender-neutral basis.

Finally, any gender-neutral system recognizes that every position has a role to play in the achievement of an organization's objectives. The responsibility associated with both managerial and non-managerial jobs should be recognized. Some organizations emphasize budgetary control or people count. Reflecting this value in an evaluation system may lead to an undervaluing of jobs often done by women that have little people count or budgetary control. More importantly, from a human resources management point of view, the system may encourage empire building, where managers increase their spending or people complement in order to increase the value of their jobs.

And merely determining that the factor definitions are free of gender bias does not mean you are home free. Before you decide to adopt a particular job evaluation system, you need to assess the degree levels and the language of the definitions *within* each factor. There may be a disproportionate number of levels to choose when describing higher level tasks, but more junior level tasks are to be combined where examples or benchmark job descriptions are used, extreme care needs to be taken to ensure they represent a diversity of both typical female and male jobs; as well, that the designers of the system really *do* understand the jobs they are using in these examples. Too frequently, I suspect job evaluation system designers and users guess what the job under review really requires.

Managers may well wonder if it is possible to do a good job of gender bias-free job evaluation such that the requirements of Ontario's *Pay Equity Act* will be met – and I suspect it is, though I would also suggest it is going to be much more difficult – and time-consuming – than those of us who do job evaluation for a living are used to. It is critical that the gender-neutrality of the job evaluation system your organization chooses or develops should be examined prior to the flurry of job evaluation activity the *Act* is likely to create.

Overall, then, all compensable factor job evaluation systems should be able to respond positively to the following five questions:

- Does the system measure the four factors required under pay equity legislation?

- Are the factors and subfactors gender-neutral, and applicable to all jobs?
- Do the factor weightings reflect what is important in considering both typically male and female jobs?
- Does the system provide for a quantitative measure of skill, effort, responsibility and working conditions?
- Can these quantitative measures be related to a salary policy?

Some organizations currently have several job evaluation systems in place, and may be loathe to change. Unlike Manitoba's pay equity legislation, the Ontario *Pay Equity Act* does not require that the organization's jobs all be evaluated on one job evaluation system. Any job evaluation system an organization uses however, should be *applicable* to all jobs and should meet the legislative requirements of gender-neutrality on all four factors. If an organization chooses to remain with several job evaluation systems, it should at least bear in mind the necessity to communicate to employees sufficient information to facilitate their comparison of jobs, perhaps covered by different job evaluation systems, once the pay equity plan is posted, and ideally choose and document how you plan to compare jobs in different systems with some bridging mechanism. It is unclear how well-received an employee's complaint would be, claiming that treatment by *another* job evaluation system in use elsewhere in the organization would have treated the job more favourably.

The Pay Equity Commission, in fact, has suggested that if a comparison is made between a female-dominated job evaluated under one system and a male-dominated job evaluated under another system, a third system should be used. This seems unworkable in most organizations – resources and reasonableness would reinforce the desirability of using a single job evaluation wherever possible.

There are clearly many other ways in which gender bias can affect job evaluation:

- the job description process, the format, questions, assumptions regarding sex of incumbent or historical incumbency;
- the structure of the Job Evaluation Committee – a balanced and enlightened representation;
- the tendency of some women to "downplay" the value of their own work needs to be guarded against;

- the "custodians" of all parts of the system's job description writing, job evaluation, system choice, training, documentation, committee discussion, supervisor sign-off – all need to be vigilant in the search for systemic, unconscious bias.

The major advantage of designing a new system is that you can design it with your "Pay Equity" glasses on. There is probably at least the potential for gender bias in all existent job evaluation systems. The major disadvantage of a custom-designed plan is that you cannot benefit by the experience other firms have had in using it. And you need to guard against over-correcting. A newly designed job evaluation system biased in favour of women's work is as problematic as the current tendency to undervalue women's work. The intent of pay equity is to fairly value all jobs without bias. It seems safe to admit, though, that our socialization – both as women and as men – makes it difficult to eliminate bias completely.

One way to counteract this potential bias is by including as many women and men as possible in this whole process.

Many organizations with job evaluation systems in place rely on the knowledge and judgment of line management. The evaluation of jobs by Committee is achieved through consensus building. Once trained, each member of the Committee participates in evaluating the jobs. Each job should be rated on the basis of a formal written job description that accurately reflects each job being considered. Through discussion about each job, the Committee works together to obtain a full understanding of the job requirements. Using the factor definitions and quantitative measures provided, each job should be evaluated separately on the basis of the four factors required under pay equity legislation.

The use of a trained Committee to evaluate jobs provides for a balancing of views and perspectives on the jobs being considered. The Committee should be representative of the various functional groups within the organization. In order to ensure acceptance of the results of the evaluation process, the Committee should be comprised of an equal representation of women and men. Where the employees are unionized, I believe the Committee should be comprised also of both union and management representatives. The measurement of jobs should be divorced from the pay determination/negotiation process. It is, therefore, recommended that individuals responsible for negotiation not participate in the

evaluation exercise. Selection of Committee members should be based on their knowledge of the jobs to be evaluated.

I have not spent any time thus far on developing or designing a new job evaluation system. There may be those brave souls who believe they can avoid all the weaknesses and capture all the strengths of the systems mentioned before, and meet the legislative criteria, and test and implement it, in some cases in very tight timeframes, as prescribed in the *Act*.

Regardless of how fair and equitable a job evaluation system may be, or appear to be, if the system cannot be consistently applied to all jobs, the requirements of pay equity have not been met.

Moreover, no job evaluation system is scientifically objective. A job evaluation system is only a tool for exercising reasoned and disciplined judgment about the relative size or worth of jobs. It is, therefore, important to build safeguards into the process to ensure the highest degree of fairness and consistency.

I would like to spend a few minutes talking about the process of job evaluation. There is no *perfect* job evaluation system. In fact, in addition to choosing a job evaluation system which meets legislative requirements, managers need to keep in mind that all applications of job evaluation systems have some common limitations:

- the job evaluation results can only be as good as the description of the job – in focus, comprehensiveness and terminology need to be bias-free.
- evaluators are human and cannot think or act without *some* biases; checks and balances are necessary to counteract them.
- the system factors and subfactors need to be examined to ensure the weightings do not favour or discriminate against certain jobs.
- evaluators must be familiar with organization structures, roles, the nature of jobs – and must be seen and accepted as reasonable people in whom the organization and its employees have placed a significant responsibility; evaluators must remain trained and true to the system's design and intent – not wielding their considerable power in inappropriate ways.

Some human resource and line managers are avoiding even examining their current job evaluation practices in light of the *Pay*

Equity Act. There are still a few who believe that pay equity will be challenged in the courts, or overturned by pressure from some business lobbies who claim it will bankrupt them, or interfere in their right to run their business as they please, or that it shouldn't be applied to their particular industry or profession. Or at least, they believe that the timeframes will be expanded and they don't want to be the first in their industry sector out of the gate. There are those who believe because they already have a job evaluation system in place, they must – *de facto* – already have pay equity in place and don't need to worry. I think there are a few who are so overwhelmed by the task before them, they are paralyzed. There are some who have been unable, as yet, to persuade their U.S. or other foreign parent that pay equity is now the law for companies operating in Ontario – and that they may be required to deviate from a company-wide job evaluation scheme for their Ontario employees.

And there are those who are unable to see clearly around the issue and how it affects their collective bargaining environment. I would like to talk specifically about companies with some part of their work force unionized, in terms of job evaluation and pay equity. I suppose my first comment would be: face the issue head on, rather than ducking or working around it. The *Pay Equity Act* mandates that in organizations that include a unionized work force, the union must be involved in choosing or approving the job evaluation system to be used, to cover bargaining unit employees. Section 14(2) of the *Act* requires employers and unions to bargain in good faith, and endeavour to *agree* on both the gender-neutral comparison system to be used, and the pay equity plan itself, or those bargaining units. I would suggest that this seeking of approval or agreement on the job evaluation system to be used is a necessary *first* step for employers to take, not something to be presented as a *fait accompli*. This requirement of the legislation seems to run counter to many old assumptions about labour relations – it mandates that employers will have to share control, seeking consensus or compromise – and that if agreement cannot be reached, an employer may face adjudication and perhaps the overturning of the employer's choice of job evaluation system. The legislation has not defined the union involvement in such things as job description and analysis, the Job Evaluation Committee, and the dissemination of salary information and it may be difficult to

generalize here: each union/management relationship is unique. But again, I would suggest that enlightened employers who are faced with these questions would do well to consider the final outcome required: the union *must* agree to the pay equity plan. If the plan were to run into trouble at posting time, would it be because the union:

- did not agree to the evaluation system, or the weightings of the factors;
- did not agree with the jobs described;
- did not agree with the results of the evaluation process;
- did not agree with the composition of the Job Evaluation Committee; or
- did not agree with the schedule or amount of wage adjustments made to female-dominant job classes?

The *Act* does not specify whether negotiations regarding pay equity should occur during normal collective bargaining, or at a separate time. There are advantages and disadvantages to both approaches; if pay equity negotiations are separated from regular contract negotiations, the gains made from pay equity would not necessarily cut into what a union would normally be able to negotiate for its members.

Conducting pay equity and regular negotiations together may give the employer a better handle on the total wage expense, both pay equity adjustments and annual increases. Another point still undefined, is how an impasse on pay equity would be settled – especially if a strike or lookout occurs. But perhaps the pay equity issue will have a permanent positive effect on the traditionally combative model of labour relations. Pay equity may require employers and employees to cross bargaining lines at least for comparison purposes. While many employers may resist talking with their union about pay equity and job evaluation, they are likely to be used to talking with the union about wages.

What may be a bigger shock – and what I suspect may herald a dramatic and permanent shift in the employer/employee relationship, is the role individual employees potentially have in this process. For, in a non-unionized environment, at least, an employee now has the legal right to challenge the gender bias of the job evaluation system on its results. What frequently had been the response of compensation people to questions from em-

ployees? – "Trust us" – or "That's confidential information" or "It's too complicated to explain." Now that inquiring employee, if she or he is still dissatisfied with the answer, can go to an outside body, to provoke you to answer these questions. And I think, in the longrun, this is going to be a very positive effect of Ontario's *Pay Equity Act* on job evaluation systems. For not only will the system itself undergo rigorous examination to ensure it is free from bias, but the process and the communication about both the system and its application will be in the public domain, as it were.

The law stipulates that the pay equity plan must include enough information about the job evaluation system so that an individual employee may judge whether the system has a reasonable structure, and has been fairly applied. Now an employee need no longer "trust you," but rather can see for herself or himself. Indeed, I suspect behind much of the mystique surrounding job evaluation in the past was simply sloppy administration – not evil intent. So to the degree that the *Pay Equity Act* requires job evaluators to ensure jobs are fairly and accurately described, are appropriately evaluated – and that the rationale for the evaluation is documented – will enhance the quality of job evaluation, as it applies to all jobs. Some compensation professionals in the past have defended their attitude by saying job evaluation is too complex for the average employee to understand. But employees are the ones who receive pay cheques – that's a fairly simple end result of the complex process of job evaluation. As well, more and more we are expecting these employees to be our front line to the public or to our customers. They will reflect in those relationships exactly the values we have exhibited in our dealings with them. If you can't defend what you have done in job evaluation, should you do it?

Opponents of the legislation, stating the obvious, complain that this law will interfere with that sacred entity, "the market." Of course – that's what it's intended to do – and to educate employees, unions and employers that Ontario has committed, within a relatively short period of time, to create a labour market that begins to value "women's work" more equitably. The means to accomplishing this is to intervene in the wage-setting process, in both the private and public sectors, in both unionized and non-unionized environments. Job evaluation is the means legislated to determine the value of dissimilar jobs in the organization. And we

need to solve the pay equity problem within the context of all the other pressures facing organizations in Ontario. This legislation will tax our creativity – as employers, as unions, as employees – to find new solutions and to use job evaluation systems in new ways.

The proponents of this legislation fully expect that by the end of the scheduled implementation of pay equity in Ontario, the market will be substantively, permanently altered in the way women's work is valued and paid. Despite the proviso that differential collective bargaining strength might once again assert itself, I hope that we will have created a generation of managers, employees, unions, legislators, and indeed the public at large, who do not want to see the hard-worked-for goal in the workplace jeopardized.

Whether you, as an employer, have a union or not, I would suggest your first step in implementing pay equity – no matter what date you are working toward – is to put creative time and energy into effective employee communication.

You are likely to be writing, collecting, revising or at least auditing your job descriptions in this process. Employees may view with suspicion or even distrust an impressive new job description push – "Does this foretell another re-organization, is my job safe, are you suspecting me of not working hard enough? Or performing well enough? Am I going to be replaced by a machine?" Of course how much you communicate will depend on your corporate culture but in this situation, I would imagine you cannot communicate too much.

Finally, I would like to put in a pitch for responsible human resource management. An organization could – JUST – meet the requirements of the law defining pay equity. At its narrowest definition, jobs without the magic percentage to be deemed female-dominant are ignored. Jobs that have no male-dominant comparators are ignored. A mechanistic application of pay equity will likely destroy pre-existing internal relativities – some of that is the intention of the legislation. However, without creating or maintaining *internal* equity as you implement pay equity you are likely to destroy employee morale and create a culture where one inequity has been replaced by another. Let us keep in mind the larger perspective that lies behind this legislation – to entrench equity, fairness, and justice in the Ontario workplace.

The Pay Equity Act: Some Legal Issues

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The principal legal issue which has developed at the Pay Equity Hearings Tribunal and in the courts is the issue of "who is the employer?" This has been comprehensively dealt with by Mr. Dale. I believe it may be of interest to briefly refer to jurisprudence which has developed from the Pay Equity Hearings Tribunal on other less prominent but nevertheless important issues.

I. What Information must be Disclosed for the Purpose of Bargaining Pay Equity

Reference: *Cybermedix Health Services Ltd.*, July 6, 1989
The Riverdale Hospital, February 16, 1990

The disclosure issue usually arises when it is claimed that a male comparator does not exist in the bargaining unit and the party representing the female job classes seeks a comparator in the establishment outside the bargaining unit. This quest is met by resistance from employers who are reluctant to divulge the names and salaries of individual management personnel or of non-bargaining unit staff. Generally speaking, the Tribunal has

ordered the employer to make disclosure. The basis for this is that the information is essential to ensure a rational and informed process of pay equity negotiation consistent with the requirements of the *Act*. In practice it may be possible to reach agreement with the union as to whether or not a particular non-bargaining unit position is claimed to be a male comparator and, if this is not the case, disclosure need not be made. It is not uncommon for bands or rate ranges to be provided rather than actual disclosure of precise salaries paid to individual employees. Although employers have argued that this information should be protected on the basis of confidentiality, the Tribunal will normally simply require an undertaking from the party to whom the information is disclosed not to use it for purposes other than the negotiation of pay equity.

II. Whether an Interested Party will be Granted Legal Status as an Intervenor before the Tribunal

Reference: *Women's College Hospital*, November 15, 1989
Wentworth County Board of Education, January 22, 1990

In these cases the consultants who had prepared the pay equity plans for the employer sought leave of the Tribunal to intervene in the proceedings and to be granted full status as a party. The complaint of the employees was that the job evaluation system which the employer was proposing to use was gender biased. In the face of this kind of allegation, the consultants wished to cross-examine witnesses, lead their own expert evidence and make submissions on fact and law. In the *Women's College Hospital* case referred to above, the consultant was refused status as a party on the footing that the language of the statute is explicit as to those who are recognized as parties before the Tribunal and, even if the Tribunal has a discretion, the employer would still be in a position to bring to the attention of the Tribunal any and all evidence necessary to defend the job evaluation system in question. The Tribunal took the same view in the *Wentworth County Board of Education* case referred to above except it did permit the participation by the OSSTF on a very limited basis. One of the arguments which influenced the Tribunal to permit OSSTF limited status was the fact that a decision with respect to job class

for teachers at the elementary school level would clearly impact teachers at the secondary school level, and that the system used to evaluate the qualifications of elementary teachers grew out of a system developed originally by the OSSTF.

III. The Role of the Administrative Tribunal

For most legislative initiatives of substance, there is a need to create an Administrative Tribunal staffed by persons with the expertise to best advance the objects and purposes of the legislation.

The starting point for statutory interpretation is found in Section 10 of the Interpretation Act, R.S.O. 1980, chapter 19, which provides that:

> 10. Every Act shall be deemed to be remedial whether its immediate purport is to direct the doing of any thing that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit.

From time to time, courts in Canada have been critical of Administrative Tribunals and have struck down a Tribunal's decision where in the view of the court the Tribunal had stepped outside its jurisdiction by in effect "legislating". However, most Administrative Tribunals are protected by a strong privative close (see the reference to the *Haldimand-Norfolk* decision of the Divisional Court referred to by Mr. Dale). Such Tribunals have the right to be wrong so long as they are acting within their jurisdiction.

Administrative Tribunals are jealous of their jurisdiction and are desirous of remaining masters in their own house. While to some conservatives the Pay Equity Hearings Tribunal may be viewed as "legislating", it is unlikely its decisions will be called into question by superior courts.

Definition and Implementation of Pay Equity at The University of Western Ontario

Les Ste-Marie
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Modern research-intensive universities like the University of Western Ontario (UWO) are large, complex organizations. In addition to the teaching functions, most often associated with universities, there are many other related and supporting operations. Modern research whether pure or applied involves a complex interaction of human and capital resources. Computing and library resources tend to be central to the successful fulfilment of a university's mission. All of these activities are housed in a physical plant which at UWO includes 65 different buildings. The human infrastructure involved in administering and supporting all of these activities represents a cross-section of most of the skills required to support our society at large.

Over 80 per cent of the institutional expenditures are committed to the salary and benefits costs of its employees. UWO employs over 1200 faculty members in five ranks, located in one of 17 discipline-based faculties, as well as 2500 administrative staff including secretaries, clerks, technicians, librarians, library assistants, administrative officers, counsellors, nurses, finance officers, custodial staff, skilled trades, cooks, food service assistants, and police constables to name but a few. In addition to the

3,700 regular full and regular part-time employees, there are hundreds of others employed in a variety of circumstances, some of which are centrally administered, while the majority are casual or temporary appointments administered by one of the faculties or central administrative departments.

Employee Relations

There are seven separate representative organizations which the university has recognized historically as being participants in the process of negotiating changes to the salaries and benefits of people employed on a regular full-time basis at UWO. The three largest of these are non-unionized associations, and include:

a) The UWO Faculty Association (UWOFA) representing approximately 1200 members of faculty at five different ranks. The population as a whole is roughly 82 per cent male and 18 per cent female.

b) The UWO Professional/Managerial Association (PMA) representing approximately 650 professional, computer support and managerial administrative staff. This population is approximately 58 per cent male and 42 per cent female.

c) The UWO Staff Association (UWOSA) representing approximately 1350 secretarial, clerical, technical, library support and research staff. This population is approximately 77 per cent female and 23 per cent male.

There are four certified bargaining groups, two of which represent a small number of male-dominated job classes and two of which include a larger number of male and female-dominated classes. These last two include:

a) Canadian Union of Public Employee (CUPE) Local 2361 which represents approximately 300 maintenance, service and skilled trades staff – 72 per cent male, 27 per cent female

b) CUPE local 2692 which represents approximately 200 food services staff – 68 per cent female, 32 per cent male.

(There is an eighth organization which represents a large part-time population of graduate students who act as teaching assistants for faculty. This group was not involved in the process.)

Initiating the Pay Equity Process at UWO

After a number of meetings of the interested parties, a Presidential Advisory Committee on Pay Equity (PACPE) was established by the President of the university in September of 1988. The Advisory Committee was broadly representative in nature, and to a large extent reflected the collegial decision-making process that lies at the heart of much of UWO's culture as a university. Each of the five large employee groups, associations and unions, were asked to appoint a representative to act on their behalf on the Committee. In addition to these five people, there were three presidential appointees; two were senior administrators, one from the academic part of the institution, the other from the central administration, plus the Chair who was a member of the administrative staff. The Assistant Vice-President Human Resources was appointed as an ex-officio member and spokesperson for the President. Representative members were selected and the Committee started what became weekly meetings in October of 1988.

Single Comparison System for UWO

The *Pay Equity Act* indicates that each certified bargaining unit has the right to negotiate many of the components of its Pay Equity Plan including: the gender-neutral comparison system, what will constitute job classes, how they are to be compared as well as a number of other points. The *Act* further states that all non-unionized employees are to be included in a separate plan, the details and implementation of which are subject to appeal, but the process for its development and implementation are not assumed to be negotiable. Given the existing employee groups, and their representation, UWO had to develop three substantial pay equity plans, one each for the non-unionized employees, for CUPE 2361 (Physical Plant), and for CUPE 2692 (Western Food Services). In

addition it would be necessary to find some way to include the male classes in the two other small male-dominated unions.

The mechanism for identifying comparators specified in the *Act* clearly created the possibility of looking for a comparator job class which was covered by another pay equity plan. As a result of the structure of the comparison process identified in the *Pay Equity Act*, the President indicated that the Committee should focus upon selecting or developing a Single Job Comparison System for use with all the pay equity plans. In addition to responding most effectively to the requirements of the *Act*, it was hoped by many of those who were to be involved in the implementation process, that this single pay equity comparison system would form the basis for a unified approach to evaluating and classifying staff jobs in the future.

Job Evaluation Systems at UWO Prior to Pay Equity

One significant feature of Ontario's pay equity legislation is its reliance on a formalized approach to the comparison of jobs in order to prove or disprove pay inequities. Although the *Act* does not identify the precise techniques to be used, it is clear that the process must include a composite of four universal job content factors (namely: skill, effort, responsibility and working conditions). These are believed to be present and measurable in varying amounts in all positions in every organization. These factors identified under the pay equity legislation are used in job evaluation plans to ensure consistent assessment of all positions.

Job Evaluation at UWO

For our purposes, the university's full-time human resources fall into two distinct segments: Faculty, for which there was no current method at UWO for making job content comparisons, and Administrative Staff consisting of: (1) unionized positions which traditionally utilize the Ranking Method to evaluate positions within their constituencies, and (2) the non-unionized staff positions for which the university has, for the most part and for many years, maintained programs for the determination of the relative

values of jobs. As is typical of most institutions, there had been little involvement by the employee unions or associations in the development of the job evaluation systems that were in use.

The Current Situation

There are three major job evaluation plans in use at UWO: The Hay Plan, The Office/Services Plan and the Technical Plan. With the exception of a couple of occupational groups within the Professional Managerial Association, these three plans form the university's current approach to job evaluation.

The Hay Guide Chart Profile Method

In terms of those plans in effect at UWO, the oldest one is that developed by, and originally implemented with, the international compensation consulting firm of Hay and Associates. This plan was purchased in 1970 for use with the university's managerial and professional positions, and has been used continually since its implementation was completed in 1973.

Sixteen salary bands have been developed to include the diverse range of managerial and professional positions within the Administrative Staff. These include a hierarchy of managerial and administrative positions plus a wide variety of professional positions, such as academic and personal counsellors, librarians, physicians, finance officers, and chartered accountants.

Positions evaluated with the Hay Guide Chart profile method spread across the constituencies represented by the two large non-unionized administrative staff associations. The top 12 bands are part of the Professional Managerial constituency and include about 380 positions. The four lowest bands are within the Staff Association and include about 120 positions.

Positions which are assumed to fall within the ranges covered by the Hay plan are evaluated based upon a written summary of the duties and responsibilities of the position, which is generally provided by the incumbent working with the supervisor. Evaluation of the senior administrative positions is handled by a Senior Hay Review Committee. All other position evaluations with the

Hay plan are handled by professional salary analysts, in the Compensation Department.

Other Point Factor Plans

The two other job evaluation plans in use at UWO were developed within the university and are generally known within the compensation profession as more traditional point factor plans. The current "Office/Services" plan was modelled closely on similar plans in effect at the time of its implementation, in a dozen other Canadian and US employers, in both the public and private sectors. The "Technical" point factor plan was developed about a year later as a result of the recommendations of an Advisory Committee established by the Personnel Department.

Office/Services (O/S) Point Factor Plan

Like the Hay plan, this allows for the recognition/reward of the various strengths of a job on a number of fronts, rather than limiting or forcing jobs into defined classification levels based upon "whole job" decisions. The plan itself consists of eight universal factors each divided into a number of degrees. This allows an evaluator to make 92 choices overall before completing a position evaluation.

Position information is provided through an open ended questionnaire, data for which is provided by the supervisor with the involvement of the incumbent where one exists. The positions evaluated under this plan are part of the Staff Association and include 11 job families with an average of three levels to each. There are another six single level classifications. About 650 positions are covered within this plan.

Technical Point Factor Plan

This plan consists of seven universal factors each divided into a number of degrees which allows an evaluator to make 136 choices overall before completing a position evaluation. There are eight levels of classifications in this plan. Positions are levelled and then assigned into one of eight vertical streams. The streams are

defined by a shared set of technical skills, i.e., audio\visual technicians, electronic technicians, and animal laboratory technicians. There are more than 400 positions evaluated under this plan. The top two levels are in the PMA constituency and include 50 positions, the balance are represented by UWOSA.

Synopsis

The job evaluation needs of the administrative staff groups are handled mainly by the Classification Method for unionized positions and by the previously described three factorized point-rating plans for the remaining university administrative staff, namely: the Hay plan, for most managerial/professional positions; the Technical plan, for all positions of a technical nature; and the Office/Services (O/S) plan, for all other non-professional or managerial positions.

Identifying the Characteristics of the Ideal Pay Equity Comparison System for UWO

The first priority for the Committee was to identify the ideal job comparison system for UWO. Initially the Committee considered the possibility of taking one of the existing plans and extending it across the entire organization. The employee group representatives indicated that this would probably be unacceptable to their members. As a result a decision was made to look for a completely new comparison system to respond to the requirements of the *Pay Equity Act*. The Committee had high expectations. The new comparison system was going to have to be: gender-neutral as defined by the legislation; acceptable to all of the major stakeholders involved in the process; sophisticated enough to capture the diversity of jobs at UWO; and finally, developed and implemented in a little over a year.

Very early in its mandate, the Committee agreed that it would attempt to function by consensus building, and open sharing of information between participants, as the primary means of achieving its objectives. In addition to this internal communication process, the Committee decided that a series of information news-

letters would be produced and distributed to each employee to keep the community informed of decisions as they were made.

The Committee was unable to find an existing job evaluation system which met all of its needs in terms of: gender-neutrality, flexibility, sensitivity to our workforce and computerization. Simultaneously with the review of existing job evaluation systems, the Committee had been discussing the possibility of developing its own point factor plan. However, the major impediment to active pursuit of this route was the fundamental ambiguity of what "gender-neutrality" meant in the context of the *Pay Equity Act*. Developing factors and weights which would be capable of handling all of UWO's workforce and which would meet the criteria of gender-neutrality was seen to be unworkable, in light of the short timeframe for implementation identified in the *Act*.

As a result, the Committee chose to undertake a Policy Capturing Study of the UWO Workforce based upon the model developed in New York by the Centre for Women in Government of the State University of New York at Albany (SUNY). This approach had been used in a number of major pay equity studies in the United States, and the largest of these was for all state employees in the State of New York. The Ontario Public Service in conjunction with the Ontario Public Services Employees Union was using this approach to handle the 55,000 employees in the Ontario Public Sector, and Carleton University had chosen to use this type of approach for its unionized administrative staff.

Once the approach was selected, a leading expert on the methodology was contracted to work with the Committee throughout the process. All phases of the data collection and statistical analysis for the process were to be handled by an independent body within the university, the Statlab. In addition to its acknowledged expertise in handling and analyzing large surveys, this independent body would help to ensure confidentiality of the individual responses by providing the Committee with aggregate information only for its review.

Policy Capturing: State University at New York Method (SUNY)

As an overview, Policy Capturing uses modern research techniques to identify accurately what is currently being done by an organization's workforce. This information is then analyzed using a number of statistical techniques and compared with the current pay levels of the types of jobs. Unlike all other existing job evaluation systems, Policy Capturing is a tool which brings no prior assumptions about what should be valued. It is a sophisticated tool for providing accurate information for the policy-makers to use to make decisions based upon what is currently in place.

The final comparisons reveal how much is currently being paid for the various types of work (job content) being done. Once the current pay policy is captured using this process, the organization is then in a position to make decisions about what changes are to be made if inequities or unacceptable practices are identified in its current pay policy. Pay policies tend to reflect a variety of influences one of which is the general values that society places on the types of skills performed. In Ontario, the *Pay Equity Act* identifies certain types of gender-based pay practices which are unacceptable and must be changed should they exist in an organization.

Policy Capturing: The Process

The Policy Capturing approach used at UWO differed somewhat from the SUNY model and consisted of a series of steps which are summarized briefly as follows:

1. Development of a UWO Job Content Questionnaire
2. Distribution and Collection of the Job Content Questionnaire
3. Factor Analysis: Definition of Job Content Measures
4. Determination of Job Classes for Pay Equity Purposes
5. Determination of Pay Equity Job Rates
6. Multiple Regression Analysis: Definition of Existing Pay Policy
7. Adjustment of Implicit Pay Policy
8. Identification of Pay Equity Adjustments

The next section of this article will provide an overview of the Policy Capturing process as it was implemented at UWO using the summary provided above as a framework.

1. Development of a UWO Job Content Questionnaire

A) General Issues

In the Policy Capturing approach a single questionnaire is developed to collect job content information for all positions. Care is taken to ensure that it is understandable to all parts of the population to be surveyed. Differential writing skills do not become an issue in the responses received with this approach. The questions are closed ended, multiple choice questions. This allows for direct entry of responses into the database. No third party interpretation of the intentions of the respondent need take place. The objective of this type of questionnaire is to reduce the potential for bias or misinterpretation to enter into the job content collection process.

Developing the questionnaire is a crucial step in the effective implementation of a Policy Capturing approach. Reduced to its simplest terms, if the job content information is not captured in the questionnaire in a gender-neutral manner, the pay policy that will be captured will not be an effective statement of what is actually going on in the organization. Any questionnaire must be customized to the workforce it is to be used in. The language must be compatible with local terms. Local job content must be visualized and appropriate questions developed to capture it. Organizational structures must be embedded in the wording, in order to differentiate and identify the appropriate levels of activity involved.

B) The UWO Job Content Questionnaire

The questionnaire went through a series of major revisions as it evolved. A sample population of forty types of jobs was identified and individuals from the classes were asked to respond to the questionnaire and provide feedback on how well they felt it captured their jobs. This resulted in a number of structural and wording changes. Upon completion, UWO's questionnaire had almost 400 closed ended questions.

2. Distribution and Collection of the Job Content Questionnaire

A) Supervisory Involvement

In the traditional Policy Capturing approach, the questionnaires are sent directly to the respondent with a covering letter from the senior officer of the organization providing an overview of the objectives of the process and encouraging the employees to respond. Supervisory input is not sought on the respondents' replies. Studies have shown that incumbents in positions are less liable to exaggerate or underestimate the characteristics of their positions than are their supervisors. By ensuring confidentiality of responses, policy-makers are more likely to get an accurate description of what is actually taking place within the workforce. The process is not being used to evaluate positions, but is being used to develop a new understanding of the existing evaluation system's implementation.

Ultimately UWO chose to follow this procedure. Questionnaires were sent directly to individuals who were notified that they were to return the completed questionnaire directly to the Statlab. All aspects of the distribution and collection of the questionnaire were handled by the Statlab.

B) Response Rate

A high response rate to the questionnaire was seen to be essential. As a result, a multifaceted strategy was developed which included a number of steps intended to inform and educate the community as well as encourage an interest in participating. Two weeks prior to distributing the questionnaire a newsletter was sent from the Committee to all employees which provided an overview of the Policy Capturing process and the role of the questionnaire. The university newspaper included a front page article on the role of the questionnaire in meeting the university's legal obligations under the *Pay Equity Act*. The questionnaire itself was sent out with a letter from the President which provided an overview of the process, guaranteed confidentiality of responses, identified the deadline for responding, and encouraged all employees to respond.

Simultaneously with the distribution of the questionnaire, a Pay Equity Information phone hotline was set up and supported

for eight weeks by the staff who had been involved in developing the questionnaire. This number was prominently featured on the questionnaire. Several hundred inquiries were received over the next two months.

The questionnaire response rate was slightly more than 60% after the first month. Another lead article in the university paper was featured after the first month which reported the response rate at that point. Our focus to the community at large was on a voluntary process but one that was aiming for a 100 per cent response rate. A follow-up letter encouraging people to respond, was sent from the Chair of the Committee to all those who had not responded. This helped to increase the overall response rate to 70%. Six weeks after the distribution of the questionnaire another letter of encouragement was sent to those who had still not responded, this time from the Vice-President of Administration. Our final overall response rate was over 80%. The highest response rates were from the administrative staff job categories. There were less than five job categories with inadequate response rates and all of these were small job classes with few incumbents.

C) Database Preparation

A large number of questionnaires were returned to the Statlab which were not complete. Problems in this area ranged from only a single question which was not completed, through a series of questions on a related topic left blank, to entire sections which were left blank or crossed out. Dealing with these incomplete questionnaires required follow-up contact, usually by telephone from the Statlab. On a few occasions it meant returning the questionnaires to the respondent in the event that large numbers of questions were not complete. In the case of a few of the smaller job classes, incomplete questionnaires represented the difference between meeting our objectives or not, so almost a month was spent on the last 100 questionnaire responses. This step was time-consuming but critical to the establishment of a comprehensive database.

3. Factor Analysis

The statistical technique used to analyze the responses is called "factor analysis". This is a statistical data reduction technique. The main objective of this analysis is to reduce the amount of information that must be studied. It combines responses to questions in the Job Content Questionnaire, based upon the responses, so that each factor includes questions that relate to the same type of job content. There are a number of different approaches possible in undertaking a factor analysis. The Principal Component Method was used at UWO. The unit of the analysis within the factor analysis was the position and not the job class, so each questionnaire response was treated as a single unit. Given that there were over 2700 questionnaires returned, each questionnaire had almost 400 answers, and there were a minimum of five possible answers for each question, the amount of data to be analyzed was substantial. The need for data reduction was essential in order for the Committee to interpret the results.

The factor analysis took two months to complete, providing the Committee with a 53 factor solution. Each factor was constructed of questions from the questionnaire which the analysis had grouped together as explaining the same type of job content. In this type of approach, the first factor explains the greatest amount of variation in the questionnaire responses, each succeeding factor explains a proportion of what has not been captured by the preceding factors. Within each factor the questions are identified according to decreasing level of relatedness to the job content that the factor is capturing.

In the UWO model, Factor 1 included over 30 questions which were linked to what the Committee called Academic or Leadership Activities while Factor 53 had one question in it related to a certain type of physical activity that did not relate highly to any other question in the questionnaire. The 53 factor solution accounted for over ninety per cent of the variation in the responses to the questionnaire. Given the nature of the workforce and the number of responses received from the various classifications, the factor solution while complex was clearly descriptive of UWO. The 53 factor solution did not include the series of questions from the questionnaire related to education and experience. The Committee assumed that these were to be significant components in

identifying the final pay policy and as a result they were grouped together into five separate factors which were also included in the final model.

The Committee reviewed the results of the factor analysis with the intention of seeing if it was possible to reduce the number of factors, in order to make the results more easily understood.

After considerable debate and exploration of a variety of possible alternate approaches, only five of the factors were eliminated. These were removed because what was explained was statistically and organizationally insignificant or the factor included clusters of questions which did not make sense. The next step in the process, the multiple regression analysis, would identify which factors were significant in the pay policy and which were not, so the Committee chose to use a 48 factor solution, plus the 5 education and experience questions in order to develop the pay policy.

4. Determination of Job Classes for Pay Equity Purposes

The mechanism used to identify the current pay policy involves comparing the job content for job classes against the pay rates for the job classes. The 53 factor solution provided 53 different measures for looking at and comparing the job classes. In order to develop these scores, the responses from all of the individuals in a job classification for each question were averaged. These values were then grouped together with the other questions that were identified as being part of the same given factor. The scores were standardized in two ways: the first was to compensate for the fact that some factors had over thirty questions while others only had two questions, and the second was so that each factor score would be based upon an average response for the entire population.

Questions and Job Classes

For the purpose of this article, a number of the existing Job Classifications have been included, to represent a cross-section of the positions at UWO. These are listed here in alphabetical order with the number of positions for each classification noted in the brackets:

Computer Service – Level 5	(14)
Caretaker	(73)
Cook – Level 1	(8)
Food Service Assistant	(59)
Library Assistant Level III	(65)
Professor	(167)
Salary Grade 16	(50)
Service Worker 30 hours per week	(33)
Technician IV	(46)

A small sample of questions have also been selected from the questionnaire, each asking for a different type of information. These are listed below with the matching short form used in the subsequent table:

8. **How often do you** do the same short or tedious task over and over for hours each day (like serving food, dusting, cleaning test tubes or checking forms). SAME TASK

84. **How often do you** use equipment that requires very controlled hand movement (like computer keyboards, typewriters, cash registers, sewing machines or microscopes). CONTROLLED MOVEMENT

113. **How often do you** analyze information (like diagnosing problems, interpreting reports, or complex diagrams). ANALYZE INFO

166. **How often are you** responsible for prevention of waste of materials (like office, medical, chemical or building supplies, library materials or inventories). PREVENT WASTE

271. **How often do you** need the following qualities: a great deal of tact and courtesy with people (other than co-workers). TACT

The questionnaire offered a response of one to five (one indicated a person spent little or no time on that element, while five indicated a great deal of time was involved). The responses to each of these questions for every individual in the selected job classes

are then averaged, with the result being a value between one and five. This average response to each of the questions for the selected job classes is presented in the table below. The average response is only one limited way to look at the information, and it is important to understand that in some cases there was a wide variation in the responses within a given job class, while there might have been a minimum variation in the responses to the same question by people in another job class. It is possible to have the same mean score from two different job classes but to have very different responses from the two populations.

When reviewing the table look down the columns to see how the different job classes scored on the same question. A larger number indicates that a relatively larger amount of time is committed to that task or skill. The lowest and highest average response for each question are noted in the table. The "All Positions" row indicates the average answer based upon all of the 2700 responses received.

Table 1
Average Response to Selected Questions for Identified Job Classes

Job Class	Same Task	Controlled Movement	Analyze Info	Prevent Waste	Tact
C.S. 5	1.14-L	3.21	1.57	1.21-L	3.64
Caretaker	3.23	1.11	1.04	2.20	2.89-L
Cook 1	3.38-H	1.63	1.00-L	2.38-H	3.63
Food Service	3.34	2.14	1.02	1.34	3.46
L.A. III	2.34	4.03-H	1.97	1.68	3.12
Professor	1.31	2.56	2.79	1.50	3.44
S.G. 16	1.24	2.68	3.18-H	1.90	4.36-H
Ser. Work 30	2.97	1.09-L	1.00-L	1.90	3.00
Technician IV	1.89	2.76	1.61	2.30	2.91
All Positions	**1.78**	**3.05**	**2.19**	**1.81**	**3.73**

Factor "Control of One's Work"

In order to illustrate the results of the factor analysis process, and to show how it can be used to highlight the similarities and differences between various jobs, it may be helpful to share one example taken directly from the questionnaire responses. The questions listed below were brought together by the factor analysis process based upon a similarity of responses across the entire university. We have chosen to call this factor "Control of One's Work" for the sake of simplicity and easy identification.

The five questions from the questionnaire included in this factor are listed below as they came out of the factor analysis. The first is the central point of the factor; the others are slightly farther away from the core of the factor. The short form used in the table below is noted in bold for each question.

191(a). **How often do you** contribute to the setting of objectives and priorities as a part of your job for your work unit? OBJECT

192(a). **How often do you** contribute to planning as part of your job? for your own work? PLAN

190(a). **How often do you** make work related decisions which affect your own work? AFFECT

187. **How often are you** responsible for deciding how to do your day-to-day work? DECIDE HOW

186. **How often are you** responsible for deciding what task to do first. DECIDE FIRST

The following table shows the average response from the members of each of the nine job classes. These scores provide a measure to understand how those who work in the classes interpret their jobs. These values from the individual questions within a factor are converted to a single measure that summarizes all of the information about this factor. This is called a "factor-based" score. The same process is completed for each factor.

Control of One's Job
Average Scores for Questions by Selected Job Classes

Job Class	Object	Plan	Affect	Decide How	Decide First	Factor Score
C.S. 5	4.21	4.00	4.43	4.58	3.93	0.277
Caretaker	1.90	1.92	2.31	2.39	1.85	-1.617
Cook 1	2.75	2.75	2.88	3.00	3.00	-0.913
Food Service	1.95	1.80	2.10	2.39	1.76	-1.667
L.A. III	3.72	3.60	3.97	4.23	3.81	-0.025
Professor	4.23	4.48	4.40	3.89	3.10	0.125
S.G. 16	4.52	4.52	4.54	4.70	4.14	0.498
Ser. Work 30	1.49	1.39	1.42	2.36	1.97	-1.915
Technician IV	3.47	3.54	3.72	4.21	3.74	-0.156
All Positions	**3.95**	**3.91**	**4.00**	**4.12**	**3.58**	**0.000**

These factor based scores provide a consistent and detailed set of values to use in determining a formula which will interpret how our current compensation relates to the content of the jobs as captured through these scores.

The Committee spent several months reviewing the factor scores for the existing job classifications. The *Pay Equity Act* indicates that positions in job classes should be "similar." Developing an operational definition of what would constitute similar, at the job class level, proved to be almost as difficult as defining what should constitute gender-neutrality.

The Committee reviewed the factor scores and the variation within the scores of the existing job classifications. We discovered that the factors which the Committee believed would be the most central to a job class ultimately contained the greatest degree of variability in the individual responses. Most job classes with little

involvement with the questions captured by a factor would generate a consistent response profile of one or two on the questions. Positions with a higher than average response could include very high scores on a couple of central questions and low scores on other less central questions included in that factor.

The existing Hay classification grades were known to contain a variety of job content in the positions located at any given level. The Committee reviewed these to see if there were female job classes captured within. Ultimately the Committee chose to use the majority of the existing job classifications as our job classes for the purposes of comparison. All ranks of the faculty were combined into a single male-dominated job class due to the definition of job class as presented in the *Act* and the Guidelines.

5. Determination of Pay Equity Job Rates

There is a great diversity in the compensation plans in place at UWO. Most of the unionized positions had single rates, although there was a step system in place for a limited number of classes in both unions. The positions represented by the Staff Association had a seniority based Progress Through the Ranks (PTR) system which led to a maximum job rate. The positions represented by the Professional Managerial Association had a combination of merit and PTR: progress to the midpoint was based upon seniority, progress above the midpoint was based upon merit. Faculty had no formalized salary maximums, as did a couple of staff classifications which were focused upon research work and were located outside the central university campus. Variations in work week and benefit costs added further complexity to identification of the final Pay Equity Job Rates.

6. Multiple Regression Analysis: Definition of Existing Pay Policy

A major statistical component of the Policy Capturing process involves comparing the job content – the factor scores – from all of the job classes with all of the job rates. This complex process involves identifying which of the job content factors that exist in the workforce are actually significant forces in creating the

existing job rate structure. Implementing this process at UWO would provide the Committee with an unique perspective on the overall relationship that existed between the various evaluation and ranking systems which had evolved based upon a variety of different pressures and needs. The result would be a mathematical equation which would provide a value for each significant factor.

There are always more factors identified in a workforce than ultimately end up being significant in the final pay policy. Identification of the significant factors was determined primarily by the outcome of the statistical analysis.

The initial Overall Pay Policy presented to the Committee by our consultants indicated that 17 of the 53 factors identified from the factor analysis were significant in capturing the present pay policy. Each of these factors had a weight or value in the Overall Pay Policy. Developing the pay line involved comparing how the Pay Equity Job Rates of the job classes related to their Projected Job Rates. The Projected Job Rates are calculated by applying the values from the factor weights identified in the Overall Pay Policy to the actual scores that each job class had generated on those factors. These values can be plotted on a graph and a straight line calculated which comes closest to all of the points plotted.

7. Adjustment of Implicit Pay Policy

This Overall Pay Policy was a statement of what was in place at the moment and was therefore not acceptable as a new statement of what should constitute a gender-neutral pay policy for UWO. The SUNY model provided an elegant yet simple means to move towards identifying the extent of the gender bias that may exist in the current pay policy. Another regression analysis was run using the factors captured in the current pay policy and the job content from all of the classes related to those factors. In addition a new variable was entered for each job class and that was the proportion of the population of each job class which was female. This became a new variable in the overall equation to which the influence of the proportion female in the existing job classes could be assigned. If proportion female in the population as a whole had contributed to the weights of our factors in the Overall Pay Policy, that influence would now be removed and attributed to the new variable,

Proportion Female. If a factor was gender-neutral, its weight did not change. However, if its original weight had been influenced by the gender make-up of the job classes, its weight would change. As a result, we captured the amount of bias that existed in the current Overall Pay Policy by removing the influence that the new variable, Proportion Female, within the existing job classes and their job rates, had on the weights of the factors captured in the Overall Pay Policy. The result was a new equation with the same factors but with the values adjusted so that there was no effect for the proportion female. This new equation became the Adjusted Pay Policy.

The Adjusted Pay Policy was then used to develop a Gender-Neutral Job Value for each job class. This value replaces the original Projected Job Rates as the new value to be used to relate to the existing job rates. All of the job classes are then plotted using their actual job rates and their Gender-Neutral Job Values.

In the traditional Policy Capturing system, two pay lines are developed: one is defined by the male job classes and the second by the female job classes. Using the process of adjusting for proportion female to create a new Gender-Neutral Value has a tendency to create parallel lines. An overall difference can be identified between the male and the female lines and that value is the amount that needs to be added to the actual job rates for the female job classes in order that they be paid in a gender-neutral manner.

8. Identify Pay Equity Adjustments

Ontario's *Pay Equity Act* stipulates that comparisons must be made between female job classes and their lowest paid equivalently valued male comparator. The value generated by the differential between the male and female lines is a system level definition of difference not a class to class level definition of difference. To move from the traditional SUNY approach requires defining a band of similarity in order to be able to look for an equivalently valued male job for each female job using the new Gender-Neutral Value for the job classes. This band can be a percentage or a dollar amount. It can be implemented based upon a fixed scale or it can be defined around the actual values of the job

classes. Each choice will have implications in defining the range of potential male comparators for any given female job class. As of February 1990, these decisions are still underway at UWO at this time. It is likely that we will define similar bands based on a spread plus or minus from the actual Gender-Neutral Value of the female and male classes. Defining the amount of the spread and whether or not the lowest paid male comparator will be the sole measure is as yet undefined.

Summary: Acknowledgements

To date, the feedback received on the experience at UWO has been that our policy-making Committee has been much more actively involved in the details of the process than has been the norm. This has been possible because of the commitment and interest of all of the individuals involved on the Committee and due to the willingness of the administration of the university to make the commitment of time and resources necessary to keep all parties involved.

As of February, 1990, there are still a number of major questions to be resolved before our pay equity plans can be finalized and posted. Some have to do with similarity and final definition of a few job classes. One of the most significant has to do with how best to communicate the essential details of the final steps in this complex process in a way which can be understood by the university community at large. We know that despite all of our best efforts and all of the compromises made along the way that there will be those affected by the outcome who will not be satisfied with the end results. This last component may present one of the greatest challenges to the ultimate coherence of our group decision-making process.

I would like to express my appreciation to all those who have served on this Committee or have provided assistance to it over the last eighteen months. In particular I would like to acknowledge the contributions made by Mr. Bob Baron, Manager, Salary Administration Section, Compensation Department, for the material he provided on the current job evaluation systems at UWO.

Pay Equity: Management and Unions Working Together[1]

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The Canadian Human Rights Act has a section, Section 11, that applies to all federally chartered companies. The *Act* was adopted in March 1978. Section 11 reads:

> "It is a discriminatory practice for employers to establish or maintain differences in wages between male and female employees in the same establishment who are performing work of equal value."
>
> Also in that section, it specifies that:
>
> "An employer shall not reduce wages in order to eliminate a discriminatory practice."

In other words, to correct this disparity, you cannot bring down the male wages.

The Canadian Human Rights Commission has been administering this *Act*, and since 1978, has been receiving from individual employees or from unions, complaints in regard to what they see as a discriminatory practice. The Treasury Board Secretariat, as the

1 This is an update of the 1988 presentation. The figures indicated are from the estimates of December 1989.

employer of the federal government, has had to deal with these complaints, and we dealt with them on a complaint basis. To try to outline what the problem was in 1978 for us, I will explain how we are structured in the federal government.

The classification system in the federal government is a complex system where you have 69 occupational groups, six broad occupational categories, and these groups are represented by 13 bargaining agents. There are approximately 211,000 employees. One union, the Public Service Alliance of Canada, represents 152,000; another union, the Public Institute of Professional Public Servants, represents 22,000; and the 11 others represent the other groups and are much smaller unions. With that operational structure, we are sure that the classification system ensures that employees doing similar work are being paid the same wages. We cannot relate one occupational group to another occupational group with our classification system, however, since each occupational group has its specific plan.

In all cases, we have had to find a way of studying the complaint. Obviously, the main point in dealing with complaints since 1978 was the fact that we had to find a common evaluation plan that would help us compare female-dominated groups to male-dominated groups to ensure that there is equal pay for work of equal value between the groups.

The Canadian Human Rights Act does specify that work that is done by these individuals must take into account a composite amount of skill, effort and responsibility as well as the working conditions. The four factors were explained, but we needed to know what was a gender-dominated group. In 1978, the Canadian Human Rights Commission had not given us any indication whatsoever on what they found was a predominant group. Was it a group that had 60% of employees from one sex or another in the group? Was it 70%? Was it 55%? There are no deadlines in the *Act* to implement the principle. There are no explanations of how to correct this situation. In 1978, as the federal employer, we were learning, and obviously the union side was also learning with us.

Until December 1986 when the Canadian Human Rights Commission did issue more specific guidelines, we operated on a complaint basis, as I previously stated. The first complaint we had to deal with, as an example, was the librarians complaining that they were doing work of equal value to historical researchers who

were working beside them in the same establishment. We had to choose a common evaluation plan and look at the positions in the two groups to decide if there were disparities. There were disparities found between the two groups. The Canadian Human Rights Commission, the Public Service Alliance of Canada (the union involved), and ourselves looked at the question, evaluated the positions, and sought a solution to the problem. We have resolved the question by giving the librarians a wage adjustment every two weeks as part of their salary until equal value is established.

On July 15, 1987, we dealt with the last pending pertinent complaint which was the Hospital Services group complaint against the General Services group – employees doing similar work but one group works in hospitals while the other group performs caretaking tasks in government buildings. The pay equity adjustments were in excess of $28 million for the period of September 1980 to July 1987, in retroactive payments only.

From 1978 up to December 1989, 5,665 employees from female-dominated groups shared approximately $70.7 million in retroactive payments and adjustments. Current ongoing bi-weekly adjustments are estimated at $6 million a year.

The federal legislation implies that employees should be paid from a year prior to the complaint that was filed if there is a disparity. Obviously, we have never settled a complaint the day the complaint was filed, so there always has been retroactivity involved. The Canadian Human Rights Commission, at one point, even asked us to pay back to the day of the enactment of the *Act* since the union proved that they had informed the employer that there was disparity at that point in time.

Until 1985, we were dealing on an individual complaint basis. However, we were uncomfortable with this method and in March 1985, the government invited all 13 Public Service unions to participate in the Joint/Union Management Initiative to identify where disparity exists rather than trying to deal with complaints as they are presented. We called this the "Proactive Measure." This venture was not to restructure the classification system, but only to ascertain whether disparity existed or not between the female-dominated groups and the male-dominated groups. The position of the employer was that the classification system was good, and we did not want to tamper with it; what we

needed was to find a common evaluation plan that could be used for the study.

It took us two years of meetings with the 13 bargaining agents to establish the parameters of the study. I believe it was one of the first times the 13 unions had dealt together representing the union side of the study. Usually they deal with Treasury Board Secretariat on a one-to-one basis, except on matters of the National Joint Council which do not deal with this kind of a study.

In March 1987, the employer and the 13 bargaining agents presented to the President a report on how to study this question, and the President agreed to the report on May 12, 1987. We then undertook the study. The objective of the study was to determine the degree of sex discrimination in pay under Section 11 of *The Canadian Human Rights Act* and to devise methods of system-wide correction to eliminate sexually-based wage disparity. That is the mandate of the Committee. We have identified the occupational groups that are female-dominated and male-dominated, and we have evaluated positions from nine female-dominated groups and 53 male-dominated groups. These groups represent a fair number of the public service employees. We have also identified a common evaluation plan which we had to adapt to the federal government so that the personnel terminology used would be adapted to the federal government's terminology as well as to the organizational structure of the government. We also determined the size of the sample because, for 220,000 employees, we had to ascertain that the sample was statistically sound and that the data from the evaluations of these positions would give us reliable data to see whether the pay adjustments were needed. We dealt with consultants and statisticians who, as I learned during those sessions, do have their own approaches to these matters. We came down to a sample of 4,419 positions, which meant that 4,419 employees had to complete a questionnaire. We also had to establish substitution criteria for this study so that again it was statistically sound and decided that we would use a stratified random sample.

The female-dominated groups were sampled along levels of groups. As for the male groups, we only sampled according to the whole group because we needed more data on the female groups to locate any disparity. The sampling of jobs performed by female-dominated groups is 2,800 compared to the male-dominated groups which is approximately 1,500 employees.

In order to do this study and get the cooperation of the employees, we had to inform the employees on this important issue. Obviously, it is something that you wish to bring out in the open. Therefore, early in September 1987 we included a pay stuffer in both official languages with the paycheques of the employees concerned by the study explaining this concept. That was quite an exercise, but it situated the problem and the purpose of the study. Then we prepared a video to explain to interested parties when we attended regional meetings what the "equal pay for work of equal value" meant in the federal government. We felt that the communication aspect was very important, since we would be unable to do the study without the cooperation of the employees.

We then had to address the data-gathering process. In order to do so, we collected the necessary job information to develop a job questionnaire which would provide details to enable the evaluation committees to evaluate the positions according to the factors I mentioned previously – skill, effort, responsibility, and working conditions. This questionnaire is a very lengthy one; it takes six to eight hours to complete. Since not all employees are equally literate, employees range from the general labourer to the Ph.D.s, we had to adapt the questionnaire to fit everyone. To help the employee fill out the questionnaire, we appended it to their personal job description so they could refer to it if they wished. We established a joint union and management coordinating body in each department who would give workshops to these employees on how to complete the questionnaire. We also had to train these coordinators. You have to envisage that there were 4,400 employees in 54 departments across the country, including the Yukon, the Northwest Territories, and Newfoundland to reach.

This was all done between September and December of 1987. The first sessions were easier to do when they were in Ottawa and the regions, but when we ventured into the outskirts, we had to bring people from the outer perimeters into a more central location to help them complete the questionnaire.

There have been 95% of the questionnaires completed. When the questionnaires were received, there was a team of union/management people who reviewed each questionnaire to ensure that all the questions had been completed properly so that the questionnaire could be evaluated afterwards. If the questionnaires

were incomplete, we had to request further information from the individual.

For the evaluation process, there were two phases. A master evaluation committee evaluated 503 positions which were used as benchmark positions or as a framework for the nine other evaluation committees who evaluated approximately 2,684 other positions. The master evaluation committee was really important. It consisted of an equal number of male and female employees from both the management and the union sides. We tried to put different occupational groups and regional representations on the committee. They evaluated from November 1987 and they finished in July 1988. It was an interesting process, and the master evaluation committee did a commendable job.

The union representatives as well as the management representatives were all federal employees: some were excluded and some were union members. Initially, representatives took sides for either union or management, but as always apparently happens, they have met and generally worked well together. The members of the other committees were also representatives of the union and the management sides. To ensure that the committees had different approaches to the question, we needed a cross-section of opinions and not people with minds very set in one way. We had a number of representatives from various regions who came to Ottawa. We hope that it was a good experience for all of them.

Now that the evaluations are done, the analysis of the jobs will be a challenge for us. We have no real guidelines from the Canadian Human Rights Commission on how to do it, and we will have to compare the results from the evaluations for female-dominated groups to male-dominated groups. Then we will have to take into account the wages of the different groups and also the Canadian Human Rights Commission's 10 reasonable factors for wage disparities that they have enunciated. The factors include training and seniority, but they do not recognize pure market value as a reasonable factor. We are constrained because we have to take into account Section 11 of *The Canadian Human Rights Act*, but we also have to take into account the Public Service Staff Relations Act which obliges us to negotiate with the individual groups. We have to take the markets into account in some way. This will be done in a joint effort, and we will try to recommend to the President the best way of doing it. The President of the

Treasury Board and his colleagues will decide whether our recommendations are solid and meaningful.

As you can see, this is a major study. I think this is probably the largest study of its kind in the world; I do not think there has ever been that size of a study encompassing so many employees. It is a question of learning and trying to ensure that the results that we will get will be reliable results so we can look at whether or not disparity exists within the public service between male and female-dominated groups. We are looking forward to the months ahead as a great challenge for both sides to try to get the final products that we need.

Question: Most of the people here are from the private sector, and I wonder what lessons they can learn from the federal government's experience. The federal government's legislation covers certain corporations. Have you had complaints from the private sector through the federal legislation? Has anyone within a bank, for instance, complained about pay equity to you?

Answer: These complaints are dealt with by the Canadian Human Rights Commission. Labour Canada follows up on the implementation of pay equity within the federally chartered companies. My understanding is that there have been some complaints, but they are being resolved. The federally chartered companies at this point in time are being proactive like we are, and not necessarily on a company basis, but sometimes it is the whole association, such as the Canadian Association of Broadcasters that is looking at how to do it.

Question: If we ask about what lessons people here might gain, perhaps the most clear lesson is to be proactive.

Answer: Yes. I think you must look at the situation and evaluate it right away instead of doing it in a piecemeal manner. I also think the Ontario legislation is a much more proactive legislation than our legislation, and it's much more detailed than our legislation was.

We were not proactive in 1978 since the parameters of what was equal work for pay of equal value had not been defined. We had to wait for the developments to be able to know what it was all about. It is fine to be proactive, but if you think you have settled the problem and then guidelines come forward that contradict your actions, it is not a very worthwhile exercise. I think the legislation in Ontario is much clearer.

Question: What reaction did you get from your employees when you first announced the study? Did they just accept it? Did they ask a lot of questions, or ask for more information? Did you have to publish more booklets or brochures?

Answer: I think some employees just took it for granted and were not very worried about it, but some were worried about how it may affect their classification level. They thought that we were auditing them again to see whether their position was properly classified. They were quite annoyed, and upon seeing the size of the sample they really wondered what we were doing. We had the unions working with us, however, and through their bulletins and regional meetings they were able to really sensitize their members to the study so that there would be no panic and to tell them that we were all working together so that auditing was not involved. They also told the male groups not to worry because their salaries would not be decreased.

Question: Is it good to condition people as quickly as you can to what's coming?

Answer: Yes. The communications strategy is very important because the morale of an organization is very important. Since a long time was required for the study, we had to inform the employees well to eliminate uncertainty.

Question: You mentioned that you had come to a common evaluations plan. Could you describe it for us?

Answer: The common evaluations plan that we chose was the Willis Plan of Willis and Associates and this plan was chosen in 1986. That is a long time ago. We invited ten companies to come and talk to us about their plans and how they were adapted to the equal pay for work of equal value concept. At that time, there were not many plans available which had been previously applied to the pay equity concept. Now there are many more available in Canada.

Question: I think my colleagues here in the private sector really wonder about taking an employee out of operation for six to eight hours to complete a questionnaire. Could you describe a little bit of what it was that you were looking for and what was the content of a six to eight hours analysis of a job?

Answer: The employees described the functions and what they thought were the skills needed for the job. The skills could be knowledge, such as university education as well as practical knowledge. Employees outlined what physical and mental efforts were needed. We had to try to develop questions that were not too direct, but questions phrased in one way and then rephrased in another way to be sure that we could understand what they were saying. I think that is one of the reasons why the questionnaire was long. Our job descriptions, unfortunately, do not encompass all the factors that we had to consider because of *The Canadian Human Rights Act*. That's why we had to go to questionnaires in addition to the job description. Our job descriptions, for example, don't take into consideration the working conditions, the stress, and the financial and human resource impacts of the job. These factors are very difficult to define.

As well as the employee completing the questionnaire, the supervisor signed afterwards, ascertaining

that the data was correct. If there was conflict between the two, which did happen, then we had to interview both and try to establish what was the root of the matter so that we had a solid, reliable questionnaire.

Pay Equity: Negotiating the Maze

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Introduction

The term "pay equity" elicits very different kinds of reactions from various individuals and groups: some welcome it, others are surprised at its implications, and still others are horrified. But as far as the human resource management community is concerned, the message is clear – we simply have to get on with it. The legislation is here; it is not going to be amended, at least in the shortrun; the government is not going to try to take out the kinks, at least not at this early date. So we are going to see 10 years of interesting developments. Through the establishment of practice and selected interventions of various regulatory agencies and the courts, we will sort out all of the conflicts between the Human Rights Commission, Ontario Labour Relations Board, and Pay Equity Commission. About 10 to 12 years from now, we will have some notion of how this thing is going to work. We will not have a great deal of sense of what is going to happen until then, and I think most people understand that it is going to be a time of some difficulty. We have to manage through it, however.

The challenge for the human resource management function, I believe, is to try to manage through it in as positive a manner as

we can, rather than imagining the worst-case scenarios, and to try to do a good job at human resource management as we work our way through the problems. What I am going to discuss here are two elements in the challenge ahead: one is an understanding of where pay equity fits in the whole question of compensation; the second is the question of how professional human resource managers can best cope with its implementation.

Pay and People

What I would like to do is to go back to some first principles. I think that an understanding of pay equity really cannot be achieved in isolation from an understanding of why people are paid differently. When we take a look at the reason that different people – either individuals or groups – *are* paid differently, we find that:

- People are in fact paid differently because *they do different jobs* with different responsibilities, skills, effort, and different working conditions.
- People are also paid differently because of *different performance levels*, because *they stay longer*, or *job-hop faster*. Some people are actually paid less because of their tenure in a particular job.
- People are paid differently in some enterprises because of the *objectives, strategies, policies, technology, size* – a whole lot of macro factors. If you happen to work in one particular corporation, you are paid in the top quartile of salary range. That is its philosophy, its policy. If you work for another, you are paid in the bottom quartile. That is its policy, its philosophy.
- Some companies pay employees differently not for the jobs they do at all, but *for their personal education and skills*. For example, many of my graduating students this year will be paid vastly in excess of what they are worth at the time that they graduate. In effect, what companies are doing is banking on their education and skills and saying "We'll have to attract them with this kind of money. We'll pay them, and we just hope we'll get some multiple on it later

on." Of course, there are organizations which pay people upon the completion of several modules of training or education whether or not they are using that training in a particular job.

- People are paid differently because *different unions have different power, or in fact are pursuing different interests* within the groups of their members. So some unions will bargain for increased pensions at the expense of wages, others may sacrifice pay increases for job security, and so on.
- People are also paid *according to the labour market* – the scarcity and competition for labour.
- And, yes, people are paid differently because *they are discriminated against* either consciously (e.g., we don't have to pay her as much because she's a second-income earner or working for pin-money) or less consciously, by undervaluing work in a job evaluation system.

Many analysts have suggested that 25 per cent of the 34 per cent differential between the average pay of men and women is due to gender discrimination. Actually, in my opinion there is very little research to suggest that is true. There is a little bit of public sector research in Oregon, a little bit in Minnesota, and even less in Manitoba to suggest that the figure might be correct in the public sector. There is no reliable private sector evidence that the amount is there. I have heard, in fact, that the cost of correction is estimated anywhere between $500 million and $5 billion. I do not know what it is and nothing leads me to believe that anyone in government knows any better.

Pay Equity and Compensation

The reality is that the 34 per cent differential was made up of some combination of all of these things. What I think is quite interesting is to overlay on this the pay equity legislation and see what it changes. What things can we look at when determining the pay for certain job classes? It seems to me that as I look at the pay equity legislation, we may no longer take into account labour market conditions except under certain circumstances. That is, we can pay some groups more than others if we can demonstrate that

they are a really and truly scarce resource in the marketplace. In general, the market is out of it unless the employer can prove the case.

We can look at performance, but we are going to have to establish that we have a reliable and valid performance appraisal system which is also gender-neutral. Most of you look at your own performance appraisal systems and, if you understand the concepts of reliability and validity, you say, "My God, we haven't got the evidence to support that, and by the way, it's going to cost us a fortune to develop the validity studies." It is no easy task.

Now that it is the *job* that has to be rated, we cannot pay people for their inherent education or qualifications unless they are required for the job – not some job in the future, but the job as it is being done now. Technically speaking, under this legislation, we can't go out and hire high potential people and pay them to keep them unless the job can justify that pay. We will have to see how this develops and the extent to which we will be able to utilize designated training positions which are provided for in the legislation.

And what about unions? I am not sure how union power is really going to have an impact. It all depends on what kind of stance the union takes, and that all depends on what kind of internal politics that factions develop and what pressures they exert. It is almost certainly true that, in a large number of cases, a very strong union negotiating for its people will carry on its back many of the non-dues-paying members who might be able to make comparisons with that organized group. That is going to depend on a lot of things. It is going to depend on the configuration of groups, and I think every company and every organization is going to have to sort that out. Imagine for a moment a major municipality's bargaining situation, such as Metropolitan Toronto, of six boroughs with 19 unions (without the teacher's union), three teacher's unions, plus non-unionized people all sitting down and working out every possible permutation and combination of plan that you can have. Their three unions are in strong competition with each other to see who can deliver the most for its people, and somewhat disinclined to agree on anything. Imagine a company whose unionized draftspeople totally and completely oppose job classification and whose unionized production workers have been

wedded to job classification for the last 45 years. We are trying to deal with those kinds of situations.

I interviewed a number of the unions in doing my research for the Ontario Women's Directorate, and I found that the union response to pay equity was extremely ambivalent. "Yes, we want pay equity, but we want complete freedom to be able to negotiate the kind of pay equity plan that we want. We don't know what that is yet, but we want the freedom to negotiate." The extent of commitment to pay equity in the union movement is very shallow. It is not strong. They coordinated a very strong position through a few people working together on a totally coordinated approach to the politicians. Within the unions themselves, particularly at bargaining unit level (and negotiations in Canada are mainly bargaining unit level), the commitment inside many unions is not strong, particularly where females are a relatively small minority. This is extremely hazardous, because I would argue that part of the job of the human resource manager is not to abandon those small minorities within the union group. I rather suspect that, in many cases, human resource people will be pushing the unions to have better pay equity plans than the unions are necessarily inclined to negotiate in the first place. I think that is quite possible, and you must be very careful not to get involved in putting in a plan which is absolute nonsense because the majority want it that way. Most human resource people understand the problems when you get disaffected factions within the union. It might on the surface be the union's problem, but it turns out to be your problem to deal with.

Many employers breathed a little easier when they saw the one per cent cap on total payroll costs in the legislation. They have little reason to breathe easier. There are many other costs associated with this legislation that are unlikely to be covered within that one per cent, and it strikes me that the one per cent has to go to the people who are making the claim. What if, for example, in the process of re-evaluating female-dominated job classes, we have other people who are upset and who are then in an inequitable position because of the adjustments made to the groups who were in an equitable position? In other words, if I have a male-dominated group and it does not have any rights under the pay equity legislation, but I move a female-dominated group and that creates an obvious and tangible disparity with this other

male-dominated group, then as a human resource manager there's no way I can allow that situation to develop. I am going to have to move them as well. Certainly the costs are going to be way in excess of the one per cent specified in the legislation which will, I believe, only cover the amounts paid to the female-dominated job classes to restore "equity".

Finally, I think that we must look ahead to the ways in which pay equity legislation may develop. At the moment it is limited to comparisons within "an establishment". But it is also clear that the activists pushing pay equity see this limiting the possibilities for low paid groups – in daycare organizations, for example – who cannot benefit because they have no male-dominated comparator groups. I am certain that we will see strong pressure to expand this legislation significantly in the future, if only because it will prove ineffective in addressing the real problems of many large groups of poorly paid females in the workforce.

Back to the Dark Ages of Human Resource Management?

It seems to me that what we will be left with is the enterprise, roughly approximating to the establishment, and the legislated requirement to focus on nature of the job content of individuals and groups. There are a couple of implications from this. The first is, in my view, unless we are capable of controlling it, this is going to put us back into the dark ages of human resource management with an unwarranted focus on "the job". The dismal art – I flatly refuse to consider it a science on the basis of existing evidence – of job evaluation, trying to find out how many tiny little categories of value we can possible decompose the job into and assign a value to. This is an unproductive, illogical, unstrategic focus on human resource management. We are doing it at a time when everybody in the field of human resource management is saying "We've got to get away from this nonsense. We have to get away from being the organization's policemen. We have to get away from this tiny little focus on atomic particles and stand back a little and look at the whole area of human resource management and how organizations can get competitive advantage through better human resource management."

In effect, at a time when organizations are changing and jobs are changing so rapidly that we cannot even keep up with job descriptions anymore – and we are flattening organizations, and executives are now doing typing, and secretaries are now doing administrative assistant work, and we are trying to enrich jobs and we are trying to change jobs and we are trying to let people grow to their potential – we have now put in a system that says "Hey, stop all of that. Stop this nonsense about people's potential. Let's just focus on the *job* itself."

A second problem is the very real amount of time and effort – and real dollars – which will be required to comply with pay equity legislation. This creates an opportunity cost since human resource professionals in organizations will not be able to take on the much more exciting and potentially productive functions of training, development, designing more effective organizations, etc., which are required in this more competitive global economy.

I also want to address the careers and the development of human resource people. Obviously there is going to be a requirement for expertise. Some of the expertise can be purchased, some will have to be developed – one of the excellent initiatives that Ontario has started is getting community colleges to do some training in this field. For a while anyway, human resource people will have some greater influence. There is nothing like a big juicy piece of interventionist legislation to create the need to have a specialist inside, particularly when the legislation is that difficult that a CEO cannot understand it. There is a danger to this, and it is a very real career danger. You start developing a technical positioning as opposed to a generalist position. We end up in almost a self-fulfilling prophecy, because this is the kind of stuff that the personnel department does and can do, that is all that the personnel department should be allowed to do.

The other thing I want to deal with is something that I consider very personal. Human resource professionals have got to watch their own credibility in this process. Over the last few years I have discussed pay equity with many senior managers, primarily in the private sector, outside the human resource field. The reaction of over 90 per cent of the people who are first exposed to this concept, particularly when they come out of a business background, is stunned disbelief. They look at you and say, "You must have got it wrong. It can't possibly be that. What about the

market?" It really is stunned disbelief. That is the standard reaction on first exposure. I would submit that as the people in your organizations begin to understand this, that will be a part of their reaction, even before you put dollars and cents on the table. Watch your own credibility. I think that there is a point at which you can get behind it and want to be positive, to push it, to be excited, to say that this is the greatest thing since sliced bread, and in the process of so doing you begin to edge away from what other managers see to be a reasonable stance. My sense is that the best way to deal with this is to clearly identify it as *social legislation* – "It's here, it's a particular way that the government has taken to address a particular problem, so let's get on with it and let's do it as best we can." My sense is that as soon as you start defending it in detail, particularly for private sector managers, you put your own credibility up for grabs. Do not get side-tracked by pay equity. It is there; we have to deal with it; let's get on with it. Let's continue to focus on those strategic human resource management issues we are dealing with.

The Way Ahead

We have to comply with what the law requires. There's no question about it. The challenge, it seems to me, is *how* we do that and yet continue to manage in a rapidly changing world.

It comes down to a choice for management and for employees in organizations, because the legislation now gives significant power to employees to impact their compensation system. Either focus on job evaluation of narrow categories or the substantial broadening of the ways in which we categorize jobs and roles. Sure we could do job evaluation. There are lots of consultants around and each one has his or her scheme and many different schemes. They all have their pros and cons. Or, we could move towards a different approach to this thing, one that a number of companies are doing, and that is to head for really broad band classifications. By this, I mean having very few pay levels within an organization. If you've got six layers within an organization, you might have no more than nine pay bands. Within those bands are a very broad range of role requirements, and we will focus our efforts and our attention not on trying to create job-centred differences between people, but

on pay-for-performance distinctions around the mid-points of those bands and the extent to which people master the skills and take on the responsibilities of expanded roles.

Out of this we stand a reasonable chance of getting some productivity and performance improvements. I would submit that if we focus on pay for performance, we focus on developing reliable and valid performance appraisal systems which are permitted under pay equity legislation. Proceeding in this manner will accomplish a couple of things. One is we will comply with the law. More importantly, we will address the imbalance; we will deal with the cause of much of this gender-based discrimination.

We have to be able to do the reliable and valid job evaluations required by the legislation. If we are only working with nine broad band categories, they still have to be the good nine categories. What I would argue strongly is that if you broad band, then you can use ranking methods; you don't have to go to the sophistication and the complication of point assignment methodology.

Of course, the approach that I am arguing for requires the development of reliable and valid performance appraisal systems and all of the training that is associated with doing such appraisals. It needs emphasizing that designing such a system is 10 per cent of the challenge: having people trained so that they can do them properly is the other 90 per cent.

To move ahead with pay equity – as we must – and to avoid regression to the dark ages of human resource management, human resource professionals must do a number of things.

- *Continue to work at reducing occupational segregation.* I hope that all of this effort that we are going to spend on pay equity will not detract from the major thrust which is to reduce occupational segregation. That effort to recruit more high potential females is going on out there, and we have to keep that pressure on. We have to work to recruit females and visible minorities into non-traditional occupations. The utopian goal is to have no "female-dominated job classes" sometime in the future. The realistic goal is to ensure that overt and systemic discrimination in all recruitment, selection, promotion, training, development, succession, compensation and other human resource practices is eradicated.

- *Try to reduce the number of classifications by broad banding.* If you take a look at the economics of broad banding, you can go a fair way in negotiations to making it worthwhile to broad band. You can trade off some flexibility in the utilization of human assets for some additional dollars pay which will be required to bring people up to mid-points of newly established classifications.

- *Focus on pay for performance.* Develop more reliable and valid pay-for-performance measures which focus less on job content and more on role performance. These will have to be perceived as reliable, valid and fair because the net implication of pay equity is that employees may be able to veto their inclusion in compensation systems if they create inequities under the pay equity plan.

- *Create specially identified development positions.* Create positions which are not within the "normal" job and career progression ladders so that you can continue to hire and manage people whose potential justifies greater pay than their immediate responsibilities warrant.

And, finally, *let's not get side-tracked by pay equity.* It is certainly not the kind of legislation that human resource professionals would have put highest on their Wish List but it is here. As we cope with it, we must remind ourselves that the survival and progression of our organizations will not rest on whether climbing a flight of stairs seven times a day is more or less valuable than mucking out animal cages! As human resource professionals, you have much more to contribute than that.

Appendix

Pay Equity Commission Implementation Guidelines[1]

Series 2: Definition of Employer

Under the *Pay Equity Act*, the employer must undertake certain actions and is liable for compliance. How the *employer* is defined ultimately affects the nature of the relevant establishment(s) and the comparisons that can be made between female-dominated job classes and male-dominated job classes. In addition, the payroll of the employer determines the amount of money that must be spent on pay equity adjustments in any one year.

No single criterion governs the determination of who the employer is, but the following concepts have been used in legal decisions:

- who exercises direction and control over the employees;
- who determines compensation;
- who hires, disciplines and dismisses employees;

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[1] This appendix consists of excerpts from the *Pay Equity Implementation Series*. These excerpts have been chosen to provide a clear summary of the mechanics for implementing pay equity. However, since these are not the complete versions of the *Pay Equity Implementation Series*, reference should be made to the original bulletins.

- who the employees perceive to be the employer;
- whether there was an intention to create an employer-employee relationship.

In more complex cases, corporate ownership, organizational structure and financial interrelationships may make the *employer* more difficult to identify. In such circumstances, the criteria listed above and employment laws jurisprudence should be considered.

Series 3: Calculating the Number of Employees in the Private Sector

No. of Employees	Mandatory Posting	Final Adjustment
Public Sector		
Not a factor	January 1, 1990	January 1, 1990
Private Sector		
500 or more	January 1, 1990	January 1, 1991
100 - 499	January 1, 1991	January 1, 1992
50 - 99*	January 1, 1992	January 1, 1993
10 - 49*	January 1, 1993	January 1, 1994

(* Employers with 10 to 99 employees *may elect* to post a pay equity plan.)

All public sector employers are covered by the *Act* regardless of the number of employees.

When determining the number of employees, all full-time and part-time employees are included whether working on a regular or casual basis, except students working during their vacations.

The number of employees refers to all employees of an employer throughout Ontario. The calculation of the number of employees is determined with respect to the employer not to the establishment. Therefore, once the number of employees is deter-

mined, all an employer's establishments are subject to the same set of obligations and time frames for compliance, regardless of the number of employees in each establishment.

Growth after January 1, 1988

Private sector employers with fewer than 10 employees as of January 1, 1988, but who employ 10 or more employees after this date, are covered by the *Act when the tenth employee is hired (see Section 3(2). They must comply immediately* rath - than according to the mandatory posting-adjustment.

A new employer who employs 10 or more employees after January 1, 1988 is covered by the *Act* and must comply from the start of its operations.

Series 4: Definition of Establishment

Pay Equity plans must be prepared for each bargaining unit and for non-union employees in each of an employer's establishments. Consequently, deciding what the *establishment* is will partly determine the number of pay equity plans needed. It will also help determine what job classes can be compared to one another.

The *Act* states that an establishment is *all* the employees of an employer who work in a geographic division. A geographic division, for the purposes of pay equity, can be a country, territorial district, or regional municipality.

An employer may decide to *expand* the definition of establishment to include more than one geographic division. The determination of establishment for unionized employees must be agreed to by the bargaining agent(s) involved. Where non-unionized employees are concerned, the employer may choose to expand the definition of establishment, regardless of what is undertaken for unionized employees.

However, an employer may not *subdivide* a geographic division. For the purpose of defining establishment, *all* workplaces of the employer in a given geographic division *must* be included as part of that establishment.

Number of pay equity plans within an establishment

A pay equity plan must be prepared for all non-union employees in an establishment. One must also be prepared for each separate bargaining unit represented by a certified bargaining agent in an establishment. Consequently, one employer, even within one geographic division, can have several pay equity plans, depending on the nature of the workplace.

Series 5: Determining Job Class

The *Pay Equity Act* requires that female job *classes* be compared with male job classes in each establishment. When jobs are combined into job classes, fewer individual jobs need to be evaluated. However, a job class may in some situations comprise a single job.

> A **"job class"** is defined as "those positions . . . that have similar duties and responsibilities and require similar qualifications, are filled by similar recruiting procedures and have the same compensation schedule, salary grade or range of salary rates."

Criterion #1: Similar duties and responsibilities

The issue is, how similar is *similar*? As "similar" is a relative term, the *intent* of the concept "job class" must be kept in mind. Employers are *allowed* to group jobs that are essentially alike. This reduces the number of job-to-job comparisons that have to be made and thus simplifies the comparison process. It also enables those jobs that are similar to be treated the same for pay equity purposes.

Criterion #2: Similar qualifications

Similar qualifications does not mean *identical* qualifications, but rather ones that are *almost* the same.

It is important to be consistent in defining "similar" in terms of basic experience, education and other qualifications.

The degree of similarity in qualifications required for jobs to be in the same job class may vary from one establishment to another. It depends on how specialized the jobs are within each establishment. Large employers tend to be more highly specialized. For example, in a large organization there may be two separate jobs – receptionist and word processing operator – where in a smaller organization, the receptionist may also do word processing and vice versa and therefore both jobs could be included in a single job class.

For pay equity purposes, the basic or "must have" qualifications needed to do the job, not the qualifications of the incumbents, should be considered.

Criterion #3: Same compensation schedule, salary grade or range of salary rates

To belong to the same job class, jobs paid on the same compensation schedule must also be paid in the same salary grade or in the same range of salary rates on that schedule.

Criterion #4: Filled by similar recruiting procedures

Recruiting procedures are often associated with qualifications. *Where* one recruits – for example, union hiring hall or college campus – is affected by the qualifications sought. Usually, the *kind* of recruiting – internal or external, newspaper or radio ad – is unimportant in the determination of job class.

Series 6: Using the "Group of Jobs" Approach

The provisions in the *Pay Equity Act* regarding a group (or series) of jobs *allow* but *do not require* employers and bargaining agents to use one job class as representative of a number of related job classes. With this "group of jobs" approach, fewer comparisons between female and male job classes need to be made in the pay equity process. The group of jobs approach is intended to be used only for job series that are predominantly female.

A "group of jobs" is defined as a "series of job classes that bear a relationship to each other because of the nature of the work

required to perform the work of each job class in the series and that are organized in successive levels." In other words, a group of job classes is an already accepted *progression of jobs* involving similar kinds of tasks and duties performed at *different levels* of skill, effort, responsibility, and working conditions.

Group of jobs approach under the Pay Equity Act

For this approach to be used, a group of jobs must have 60 per cent or more female employees overall, *or* be determined by a review officer *or* be agreed to by an employer and a bargaining agent. A group of jobs may have some male job classes in it.

A single job class in a job series can be used to represent the whole group of jobs. The "representative job class" is the one (whether female, male, or neutral) with the *greatest number* of employees. If two or more job classes in the same series have the largest (and equal) number of employees, then some possible "decision rules" may be required to determine which will be used as the representative job class.

An identical pay equity adjustment must be given to all job classes in a group of jobs. Therefore, dollar relationships between job classes in the group are maintained.

Series 7: Determining Gender Predominance

All the jobs within an establishment can be classified as belonging to a female job class, a male job class, or a gender-neutral job class (a job class in which neither females nor males predominate).

The *Act* requires that female job classes be compared to male job classes in the same establishment. If a female job class is found to be of equal or comparable value to a male job class, it must be paid the same job rate.

Percentage criterion

If a job class has 60 per cent or more female employees, it is generally a female job class. If it has 70 per cent or more male employees, it is generally a male job class.

However, the percentage criterion alone may not be sufficient to determine gender predominance. In smaller job classes, gender predominance can change significantly if one or two employees enter or leave the workforce.

Historical incumbency and gender stereotype criteria

Historical incumbency refers to the gender of employees who have held a particular position within an establishment over time. Gender stereotype goes beyond the experience of any single employer. It involves noting the gender of those who have *traditionally* performed a particular kind of work in Ontario society or the existence of a belief that a particular gender performs a particular kind of work.

The *Act* allows a job class to be classified female-dominated or male-dominated *not* according to the gender of its current employees, but according to the gender of:

- past incumbents (historical incumbency); *or*
- those generally perceived to be doing the work (gender stereotype).

When considering these two criteria, time period and percentage figures must be taken into account.

When using historical incumbency and gender stereotypes, the 60 per cent requirement for female job classes and the 70 per cent requirement for male job classes are applied to the figures. For example, with historical incumbency, if over time the workers in a job class have been 60 per cent female but at present are only 50 per cent female, the job class would still be considered a female job class. If data is being used to demonstrate gender stereotype, these same percentages should be used.

Series 8: Disclosing Information

Employers and bargaining agents must negotiate agreement on the definition of establishment and on the male or female predominance of job classes. They must also agree on the gender-neutral method of comparison to be used for measuring the value of job classes and ultimately on the pay equity plan itself.

In order for an effective negotiating process to take place, certain kinds of information will have to be shared between the parties involved. For non-union groups, employers may wish to involve employees in the development of their pay equity plans. If they do so, the employees involved will have to have sufficient information to participate effectively in the process.

Certain information will have to be disclosed in the posted plan. Section 13 outlines the minimum content of a pay equity plan:

- definition of the establishment (the workplaces covered by the plan);
- a list of the female and male job classes to which the plan applies (gender-neutral job classes do not have to be listed);
- a description of the gender-neutral comparison system being used;
- the results of the job class comparisons in terms of value, appropriate to the job comparison system being used, and in terms of the *differences* in the job rates for all female job classes and their selected male comparators, if any;
- an explanation of which permissible differences in compensation allowed under Section 8 of the *Act* have been used, and why;
- the targeted schedule and plan for adjusting the compensation of female job classes; and
- the date of first adjustments (i.e., no later than the mandatory adjustment date set out in the *Act*).

Series 9: Gender-Neutral Job Comparison

The *Pay Equity Act* requires employers (in agreement with bargaining agents, when unionized employees are involved) to compare the value of female-dominated and male-dominated job classes in their establishments, using a gender-neutral job comparison system. This requirement applies to all public sector employers and to private sector employers with 100 or more employees. Private sector employers with between 10 and 99 employees may follow the same procedures as the larger employers.

(Small employers may choose not to prepare formal pay equity plans, but they must still achieve pay equity by the mandatory date applicable to them, using systematic compensation practices and maintaining adequate records so they can properly respond to any complaints.)

The *Act* does not specify, and the Pay Equity Commission does not endorse, any particular method or system of job evaluation or comparison. However, the *Act* does require that any system being used for pay equity purposes value the content of jobs – using a composite of the four factors of skill, effort, responsibility and working conditions – and be free of gender bias.

Job information or descriptions

Before jobs can be evaluated, information about their content must be documented. Information about the content of jobs can be gathered through observation, interviews, questionnaires, review of existing job descriptions or the development of new ones. (The *Act* does not explicitly require job descriptions.)

Selection and definition of comparable factors

The *Pay Equity Act* requires that any comparison method used in the pay equity process measure a composite of the four factors of skill, effort, responsibility and working conditions. These are often divided into subfactors – for example, responsibility for machines and responsibility for people might be subfactors of responsibility. Different subfactors may be chosen, according to what characteristics are valued in a particular organization.

Weighting of factors

Some comparison systems allow for factors and subfactors to be weighted to reflect their relative importance to the organization. Weighting involves making judgements about how the organization values different aspects of job content; this is perfectly acceptable, provided that the weightings themselves are free of gender bias.

The factors with the heaviest and the lightest weightings should be especially carefully examined to ensure that these weights do not favour one sex over the other. For example, if a very high rating is given to technical skills, which are most often found in male job classes, and a very low rating is given to dexterity skills, which are most often found in female job classes, this will have an effect on the gender neutrality of the evaluation system.

The evaluation process

The *Pay Equity Act* does not specifically require that job evaluation committees be used in the pay equity process, but there are significant advantages to the committee approach. A committee will be able to draw on a wider knowledge of the various jobs in the establishment than a single evaluator, and the results of a committee process are more likely to be acceptable to the employees. Both the selection of members of the job evaluation committee and the committee's own process must naturally be free of gender bias.

Pay equity plans

A description of the gender-neutral job comparison system must be included as part of each pay equity plan. It is important to remember that the plan should be easily understood by the employees whose jobs it covers.

The description of the comparison process would usually include the following:

- a general description of the method used;
- definitions for the four factors of skill, effort, responsibility and working conditions, plus the definitions of any sub-factors; and
- factor weightings, if applicable.

Series 10: Which Job Classes to Compare

Pay equity is achieved when a female-dominated job class is compensated the same as a male-dominated job class of equal or comparable value. When there is no class of *equal or comparable* value to the female job class, the male job class used for comparison purposes is the highest paid of *lower-valued but higher-paid* male classes. This is the "comparator class."

1. Look for a male job class of *equal or comparable value*, covered by the same pay equity plan. This is the "*inside*" comparison. If more than one is found, the one with the *lowest* job rate is the appropriate comparator.

2. If there is no male job class of equal or comparable value covered by the same pay equity plan, look for one from among other male job classes in the establishment. This is the "*outside*" comparison. If more than one is found, the one with the *lowest* job rate is the appropriate comparator.

   When there is no "inside" comparator, boundaries between one bargaining unit and another, or between a bargaining unit and the non-union group of employees, must be crossed to find a male comparator job class anywhere in the establishment.

3. If there is no male job class of equal or comparable value in the establishment, look at male job classes that are of *lower value* but *higher paid* than the female class under consideration. This is the "*throughout*" comparison. If more than one is found, the one with the *highest* job rate is the appropriate comparator.

   Pay equity is achieved when the job rate for the female job class is at least as great as the lowest job rate for the first two categories of comparators or the highest job rate for the third category.

   When there is no appropriate male comparator class anywhere in the establishment, the female job class under consideration does not have access to pay equity under the *Act*.

Series 11: Determining Job Rate – Salaries/Wages/Payments

The *Pay Equity Act* requires that the job rate for a female job class be the same as the job rate for its male comparator job class. "Job rate" is defined as the highest rate of compensation, and compensation includes salaries, wages, payments and benefits. In this guideline, the salaries, wages and other cash payments or income components are discussed. Therefore comparisons of both the wages/salary/payments component and the benefits component of compensation should, technically, be carried out. Some forms of work income, such as commissions, tips, gratuities and bonuses, can further complicate the determination of job rates in some kinds of establishments.

The job rate for a job class is independent of the incumbent. It may exist even if there is no incumbent.

The *Act* permits differences in compensation resulting from the use of gender-neutral formal seniority or merit systems, and from gender-neutral red-circling, temporary skills shortages, and temporary training or development assignments.

Formal seniority and merit systems may justify permissible differences in compensation under the *Pay Equity Act*. Under a merit system, an employee's progression through the salary range is based on formal performance ratings and the employees are aware that performance affects their progression in the salary range. Any merit system used must also be demonstrably gender-neutral.

Under a seniority system, the *maximum* salary of the range is the job rate for pay equity purposes. Under a merit system, the *reference point* of the salary range is the job rate for pay equity purposes. The midpoint and the reference point are two different things, which sometimes coincide and sometimes do not. In some salary ranges, the reference point might be two-thirds of the way up the scale, for example. The reference point is the point that employees performing at the levels their jobs require may be expected to reach.

Some employers do not establish or maintain salary ranges for specific job classes. Instead, they make salary decisions every time a new employee is hired or when an employee asks for an increase. In this kind of situation, for pay equity purposes a job rate must

still be identified for each job class. The maximum rate paid any incumbent of a job class (excluding the effects of a merit portion or seniority, where applicable) would be considered as the job rate.

The determination of job rates where established salary ranges do not exist will have to be done so it is justifiable on the basis of job content, and employers will have to be prepared to show that the determination of job rate is a gender-neutral process.

Commissions, bonuses, incentive pay, tips, etc.

Because of the great variety of payments that could be included in the category and the many ways they are used, it is impossible to develop a guideline to cover every possible situation. However, the following general principle can be used when addressing pay equity issues: When determining the portion of those payments that should be included in the calculation of job rate, use the amount of such payments that can be defined as part of the base salary and exclude the amount that can be defined as merit pay. When costing such payments, use standard costing procedures to put them into an hourly rate.

Series 12: Determining Job Rate – Benefits

Under the *Pay Equity Act*, a female job class and a male job class that have been found to be of equal or comparable value must be paid equally. That is, the two classes must have the same job rate. Job rate is defined as "the ***highest rate*** of compensation for a job class," and compensation includes salary, wages, payments *and* benefits. Therefore comparison of both the wages/salaries/payments component and the benefits component should technically be carried out.

Comparisons between part-time and full-time job classes

If the compensation of a part-time job class must be compared with that of a full-time job class, the value of benefits must be standardized on a common time unit – normally on a per hour basis. The unit value of 40-hour-a-week employees is based on a figure of, for example, 2080 hours a year, even though some of that

time is time off for vacation or illness. For 25-hour-a-week employees, the figure is 1310 hours a year, and so on. The cost of the benefit is then pro-rated over the number of hours worked per year.

Series 13: Permissible Differences in Compensation

The *Pay Equity Act* requires that employees in a female job class and those in its male comparator job class be compensated equally. However, the *Act* does allow some differences in compensation, in the process of developing pay equity plans, based on one or more of five exceptions. These permissible differences do not alter the job rate for a job class, but rather what employees in the job class may be paid. This means that, when a permissible difference is used, the job class under consideration is *not* excluded from use as a comparator class.

Where a female job class and a male job class are found to be equal or comparable in value, some incumbents within a job class may continue to have some degree of difference in compensation if the employer can show that the difference is the result of one or more of the five factors. The following list indicates whether the factor applies to individual incumbents, whole job classes or both:

- a formal gender-neutral seniority system (incumbent);
- a temporary employee training or development assignment (incumbent *or* occasionally job class);
- a merit compensation plan, based on formal performance ratings, that has been brought to the attention of the employees (incumbent);
- red-circling following gender-neutral re-evaluation, where a position has been downgraded and the compensation of the incumbent has been frozen or increases have been slowed down, until the compensation for the position catches up to the compensation actually being received by the incumbent (one or more incumbents).
- a skills shortage that is causing a temporary inflation in compensation (job class *or* incumbents).

In addition to these five permissible differences, a casual position may be also excluded from consideration for pay equity, as may some differences which result from bargaining strength, after pay equity has been achieved.

Three general principles apply to the use of the permissible differences:

- It is the employer's responsibility to establish that all or part of the wage difference between incumbents in two comparable job classes is due to one or more of the five permissible differences.
- The permitted difference in compensation is only the portion that can demonstrably result from one or more of the permissible differences allowed by the *Act*. For example, if the difference in compensation between two comparable job classes is found to be $1,000 but $300 of that difference can be demonstrated to be due to the higher seniority of the incumbents of the male job class, then the pay equity adjustments required for the female job class would be $700.
- Permissible differences may only be used when their application is free of gender bias.

Seniority system

The *Act* allows differences in compensation resulting from the application of a formal seniority system that is recognized by affected employees and that does not discriminate on the basis of gender.

Temporary training or development assignment

Differences in compensation attributable to temporary training or development assignments can be justified under certain circumstances. The *Act* is specific about the criteria for such assignments:

- They must be equally open to men and women.
- They must be developmental in nature – that is, expected to lead to career advancement.

- They must be temporary for the trainees involved – that is, either of a fixed duration, or until a specific training goal has been achieved.

Merit system

Merit can be used to justify a difference in compensation between incumbents in two equal or comparable job classes if a merit compensation system is in place and is based on formal performance ratings. Employees must know their increases are based on merit and how those increases were determined. In addition, the system must be gender-neutral in application.

Red-circling

Red-circling can be used to justify a difference in compensation between some incumbents in two equal or comparable job classes *if what led to the red-circling was a gender-neutral re-evaluation process.*

Red-circling usually involves withholding some or all of the increases that would normally have been given to an employee whose job has been found to be over-valued. No employee's compensation can be reduced as a result of the pay equity process.

Skills shortage

The *Act* permits differences in compensation resulting from a temporary skills shortage. This is allowed only when the skills shortage is currently causing a temporary inflation in compensation and the employer's difficulty in filling a position is due to a shortage of suitably skilled applicants.

An employer must have a defensible method for determining whether or not a skills shortage exists.

Series 14: Pay Equity Adjustments

For pay equity to be achieved, adjustments must be made to the job rates of all female job classes currently being compensated at lower rates than their male comparator classes. Pay equity adjustments

are the increases in compensation given to female job classes to bring them up to the level of their male comparator job classes. Such increases include adjustments to salary or wages *and* benefits (or payments in lieu of benefits). Male employees in female job classes also receive pay equity adjustments.

The *Pay Equity Act* prohibits employers from reducing the compensation of any employee or of any position or job class in order to achieve pay equity.

The *Act* prescribes the minimum amount that an employer must spend on pay equity adjustments each year until pay equity is achieved, starting with their first mandatory adjustment date. This amount is the lesser of

- one per cent of the employer's total payroll in Ontario for the previous year
- the amount required to achieve pay equity for all female job classes in all the employer's establishments in Ontario.

Note that the total amount to be paid out may be spread out over an entire 12-month period following the mandatory adjustment date but that some amount must be paid out *on* the mandatory date. Such total amount must not be less than one per cent of the previous year's payroll (or the amount necessary to achieve pay equity), whichever is less. Employers and unions may negotiate the size and timing of such adjustments for the 12-month period.

For organizations that have more than one establishment and/or more than one pay equity plan, the employer (in agreement with the bargaining agents, when bargaining units are involved) can decide how to distribute the available funds. Three criteria set out in the *Act* must be observed:

- The female job classes with the *lowest* job rates in each pay equity plan must receive larger increases than other job classes in the same plan until pay equity is achieved *or* until they are paid at least as much as the next *lowest* female job classes in the same plan.
- All affected female job classes must receive a pay equity adjustment each year until pay equity is achieved.

- All *jobs* in an affected job class must receive the same adjustment in dollar terms and all incumbents must receive an adjustment each year.

Pay equity adjustments could be distributed in a number of ways among the different job classes and different pay equity plans.

Pay equity adjustments must begin no later than the mandatory dates set out in the *Act*. There is no requirement for pay equity increases before an employer's mandatory adjustment date, but some employers may wish to begin making adjustments before their relevant dates.

Retroactivity is only an issue if pay equity adjustments are not begun and/or completed according to the schedule. For example, the complaint resolution process could go on past the employer's mandatory adjustment date, in which case incumbents of female job classes would receive increases retroactive to that date, once the issue is resolved.

Series 15: Pay Equity Plans

The purpose of pay equity plans is to demonstrate in some detail how pay equity will be achieved in Ontario's workplaces. They must include specific information, such as the identification of job classes involved in comparisons, a description of the gender-neutral method of comparison used, an explanation of how wage adjustments will be made, as well as other data.

Pay equity plan documents must be posted prominently where they may be read by all employees in the workplace.

Where unions are involved, a number of issues are negotiated, for example: the pay equity plan for the bargaining unit, the determination of establishment, the determination of whether a job class is female or male, and the gender-neutral method of comparison to be used. In addition, the *Act* states that the bargaining agent and the employer must negotiate in good faith. In non-union settings, employers initiate and are responsible for the development of plans, but may wish to involve employees in the process.

Content of pay equity plans

- ***Pay equity plans should identify the bargaining unit or non-union group covered by the plan and Section 13 outlines the minimum content of a pay equity plan.***
- *Definition of establishment*: Where bargaining units are involved, the employer can negotiate with the bargaining agent(s) to expand the definition of establishment, as well as whether job classes covered by the proposed plan are female or male. Where non-unionized employees are involved, the employer can make these decisions unilaterally, although subject to complaint once plans are posted.
- *List of all female and male job classes in the unit to whom the plan applies, as well as any male job classes in other units of the establishment, which are being used as comparators*: This could include identification of the various jobs within each job class, if these are not generally clear to employees.
- *Description of the gender-neutral comparison system*: The selection and content of the system must be negotiated by the employer and the bargaining agent(s); where non-unionized employees are involved, the employer can choose the system, subject to possible complaint by employees after posting. Any system selected must measure job value using a composite of the four factors – skill, effort, responsibility and working conditions. It must also be gender-neutral in design and in application.
- *Results of value comparisons*: The values assigned to female and selected male job classes should be described in terms appropriate to the system being used. Once job classes have been compared and found to be of equal or comparable value, their compensation is then compared to determine whether inequities exist.
- *Explanation of permissible differences (exclusions)*: The plan needs to identify the use of, and reasons for relying on, any of the exclusions allowed under Section 8(1) and (3): seniority, merit pay, temporary training assignment, red-circling, temporary skills shortage and casual positions.
- *Identification of all female job classes for which pay equity adjustments are required*: The plan should also describe how

the compensation of those job classes will be adjusted, with specific information about the first adjustments to be made.

- *Date of first adjustments*: The date listed in the plan must not be later than the mandatory adjustment date set out in the *Act* under Section 13(2)(e).

Series 16: Dispute Resolution I – Review Services

The *Pay Equity Act* includes processes for the resolution of disputes which may arise in the course of establishing, implementing and maintaining pay equity plans. These may include a failure to agree on a negotiated plan, an objection to a plan posted by an employer, or complaints concerning implementation of a plan or violations of the *Act*. The resolution processes vary according to the nature of the dispute and the parties involved.

The Pay Equity Commission is composed of a Pay Equity Office and a Pay Equity Hearings Tribunal, two independent bodies with distinct functions and powers. Any complaint that is filed with the Commission will be forwarded to the Review Services Branch of the Pay Equity Office. Review Services will provide assistance to enable the parties to find a resolution of the issues(s) which confront(s) them. If this process is unsuccessful, the review officer has a number of options, including the making of an order. Either party objecting to a review officer's determination may request a hearing before the Pay Equity Hearings Tribunal.

The "Application for Review Services" Form

Assistance in dispute resolution may be obtained by submitting an "Application for Review Services" form to the case co-ordinator of the Pay Equity Office. Forms are available from the Commission or any Ministry of Labour district office. A letter or telephone call will be accepted as an application from anyone who prefers such or is unable to obtain a copy of the form. All applications will be reviewed by the case co-ordinator to ensure that they are complete, before a review officer is assigned.

An Overview of a Review Officer's Role

When the case co-ordinator receives an application, it will be assigned to a review officer by the director of Review Services. The review officer will contact the applicant to discuss the issue(s) involved. This telephone call may clarify an issue or suggest an avenue of approach, so that no further action by the review officer is required. The review officer will arrange a meeting between the parties if it is determined to be required. Meetings will usually be held at the employer's premises. The nature and extent of a review officer's involvement will depend on the specific needs of those who apply for assistance. The role of the review officer is to investigate, advise, mediate and, if necessary, order.

(III) When a resolution cannot be reached

Review Officer's Orders

Orders will vary, depending on the nature of the dispute. In general, an order will set out the steps the employer and bargaining agent, if any, must take to prepare or revise the plan or comply with the *Act*. Where a bargaining unit is involved, the order may be a determination of the issue(s) in dispute only, and a direction to the parties involved to complete the balance of the work required on their own. In such an event, the review officer would monitor the continued efforts of the parties to prepare and post their pay equity plan.

Requesting a Hearing Before the Pay Equity Hearings Tribunal

Following the parties' review of the order or decision made by a review officer, a request for a hearing may be made to the Pay Equity Hearings Tribunal regarding the issue(s) in dispute.

Series 17: Dispute Resolution II – Pay Equity Hearings Tribunal

The Pay Equity Commission, created by the *Pay Equity Act, 1987*, consists of two parts: the Pay Equity Hearings Tribunal and the

Pay Equity Office, which includes the Review Services Branch. The two parts are separate and independent of each other.

The Hearings Tribunal is a quasi-judicial body and has exclusive jurisdiction to determine all questions of fact or law that arise in any matter before it. The action or decision of the Hearings Tribunal is final and conclusive for all purposes.

The goals of the *Pay Equity Act* can best be achieved through the co-operation of employers, bargaining agents and employees. The Pay Equity Hearings Tribunal is committed to encouraging settlement between the parties and will provide a final and binding mechanism to resolve disputes.

The Hearings Tribunal is committed to a hearing process and to decisions which balance the need to be fair, accessible and efficient. The Hearings Tribunal will engage in an active program of outreach to the community to monitor the achievement of its goals.

The Hearings Tribunal is required to hold a hearing:

- If a party requests a hearing following an order of a review officer;
- If a review officer has notified the parties and the Hearings Tribunal that he or she has decided that a settlement cannot be effected and that he or she will not be making an order;
- If the matter has been referred to the Hearings Tribunal by a review officer;
- If a party disagrees with a decision of a review officer that the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith, or disagrees that the Commission does not have the jurisdiction with respect to the complaint;
- If the Hearings Tribunal receives an objection to a posted plan, where the plan has been dealt with by a review officer;
- If a party fails to comply with an order of a review officer;
- If a person seeks the consent of the Hearings Tribunal to institute a prosecution for an offence under the *Act*;
- In any other circumstances provided by the *Pay Equity Act, 1987*.

Rules of Practice

Decisions of the Hearings Tribunal will be based on the evidence adduced at the hearing. In order to expedite proceedings, responsibility for serving documents is placed with the parties, not with the Hearings Tribunal. A party requesting a hearing will be required to set out the facts, events and issues which form the basis of the application, but not the evidence in the case (Form 1). Each respondent is required to complete a response setting forth the facts, events and issues on which it relies (Form 2). A party may choose to file a reply to the facts, events and issues raised in a response. A party will not be permitted to raise a fact, event or issue which is not set out in the application, response or reply, except with the leave of the Hearings Tribunal. The requirement to define the issues in advance of a hearing, sometimes referred to as "scoping" a hearing, is a necessary step to focus and limit what otherwise could result in protracted and costly hearings.

The Hearings Tribunal will often hold a pre-hearing conference to identify and narrow the issues, to obtain agreement on the facts, events and documents, to encourage the exchange of all relevant documents, and to identify and attempt to resolve procedural and preliminary objections. The vice-chair who conducts the pre-hearing conference will not preside at the hearing.

Series 18: Small Private Sector Employers

All public sector employers, and all private sector employers with 100 or more employees must prepare and post pay equity plans to comply with Ontario's *Pay Equity Act*.

Private sector employers who had an average number of employees between 10 and 99 employees in 1987 have two choices about how they will achieve pay equity in their establishments. They may follow exactly the same process of preparing and posting pay equity plans as all public sector and private sector employers with 100 or more employees are required to do by "opting in" to Part II of the *Act*. Alternatively, employers can choose not to prepare and post pay equity plans, but they must ensure by some means that they have implemented pay equity by the required date (January 1, 1993 for those employers with between 50 and 99 employees and January 1, 1994 for those with between 10 and 49

employees). Both these options require making comparisons between female-dominated and male-dominated job classes, so that job classes of equal or comparable value can be paid the same.

Until notice of a decision to post is provided under section 20, small employers may maintain their compensation practices that were in existence before January 1, 1988 and may give pay increases in either percentage or absolute dollar amounts between that date and the mandatory adjustment date. This holds until January 1, 1993 for employers whose average number of employees in 1987 was between 50 and 99 and until January 1, 1994 for employers with between 10 and 49 employees in 1987. After these dates (subject to section 8(2)), no compensation adjustments can be provided that increase the difference between the compensation assigned to female and male jobs of equal or comparable value.

Employers with fewer than 100 employees in 1987 can choose whether or not to prepare and post pay equity plans, based on what best suits their own particular circumstances. One of the most important implications of this choice is the effect is has on when pay equity must be achieved. Those who choose to prepare and post plans can phase in their pay equity adjustments in exactly the same way as the larger private sector employers. The requirement is to pay out at least one percent of the previous year's Ontario payroll each year until pay equity is achieved. Adjustments must begin on the relevant mandatory adjustment date. Those who choose not to prepare and post plans must achieve pay equity on or before their mandatory adjustment date, without the benefit of phasing in pay equity.

The schedules that apply to small employers show how the time frames are different, depending on which of the two options is chosen.

Schedule for Small Employers who Choose Not to Post Plans

Average number of employees in Ontario during 1987	Date by which pay equity must be achieved
50 - 99	January 1, 1993
10 - 49	January 1, 1994

Schedule for Small Employers who Choose to Post Plans

Average number of employees in Ontario during 1987	Adjustments begin	
50 - 99	January 1, 1993	Adjustments continue until pay equity is achieved using at least 1% of the previous year's Ontario payroll each year.
10 - 49	January 1, 1994	

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